United States Court of Appeals

for the Second Circuit

APPENDIX

Original

74-2520

United States Court of Appeals

FOR THE SECOND CIRCUIT

CAROL CROOKS,

Plaintiff-Appellee,

v.

JANICE WARNE, individually and as Warden of the Bedford Hills Correctional Facility, CAPTAIN WOOLEY, individually and in her capacity as Captain at the Bedford Hills Correctional Facility, LIEUTENANT CRATTLE individually and in her capacity as Lieutenant at the Bedford Hills Correctional Facility,

Defendants-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

JOINT APPENDIX

LOUIS J. LEFKOWITZ
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Bronx, New York 10451
(212) 993-6250

UNITED STATES COURT OF APPEALS
FILED
FEB 8 1975
A. DANIEL FUSARO, CLERK
SECOND CIRCUIT

249 Press of Fremont Payne, Inc., 417 Canal St., N. Y.—96t

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PAGINATION AS IN ORIGINAL COPY

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CIVIL DOCKET

UNITED STATES DISTRICT COURT

11-4-74 JUDGE [illegible]

Jury demand date:

C. Form No. 106 Rev.

TITLE OF CASE	ATTORNEYS
CAROL CROOKS V JANICE WARNE, individually and as Warden of the Bedford Hills Correctional Facility CAPTAIN WOOLEY, individually and in her capacity as Captain at the Bedford Hills Correctional Facility LIEUTENANT CRATTLE, individually and in her capacity as Lieutenant at the Bedford Hills Correctional Facility.	For plaintiff: Bronx Legal Services 579 Courtlandt Av. Bronx, N.Y. 10451 993-6250 For defendant: Louis J. Lefkowitz, Atty Gen. 2 World Trade Center, NYC 10047 488-5168

FILED JAN 8 1974 S.D. N.Y.

STATISTICAL RECORD	COSTS	DATE	NAME OF RECEIPT NO.	REC.
. 5 mailed x	Clerk	1/8/74	[illegible]	[illegible]
. 6 mailed √	Marshal			
sis of Action: Civil Rights	Docket fee			
	Witness fees			
ion arose at:	Depositions			

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CAROL CROCKS V. JANICE WARNE

BRIEANT, J.

74 CIV. 2

DATE	PROCEEDINGS	Date Order Judgment N
May 31-74	Filed Complaint and issued summons.	
May 31-74	Filed affdvt & order appointing Jerome Smith for service of process....Clerk.	
Jun.17-74	Filed ANSWER by the deft to the complaint.	LJL
Jun.27-74	Filed Order granting pltff leave to commence & prosecute action in forma pauperis, nunc pro tunc as of the filing thereof.... BRIEANT, J.	
[illegible]	[illegible]	
Jul.8-74	Filed True Copy of order granting leave to commence & prosecute action in forma pauperis.....Clerk.	
Jul.16-74	Filed defts post-trial memorandum.	
Jul.16-74	Filed pltffs post-trial memorandum.	
[illegible]	Filed transcript of record of proceedings, dated [illegible]	
Sep.6-74	Filed pltffs show cause order to punish for contempt. Ret. 9-10-74. CONNER, J.	
Sep.6-74	Filed affdvt & Order permitting physical & medical examination of pltff.....CONNER, J. m/n	
Sep.10-74	Filed Order that no reason appears why the order entered on 9-6-74 should be dissolved or modified.....CONNER, J. m/n	
Sep.11-74	Filed Order that order of 9-10-74 is amended nun pro tunc to read: 5. The examination will take place on 9-11-74, or as soon thereafter as pltffs physician is available.....CONNER, J.	
Oct.2-74	Filed pltffs affdvt in support of motion for prelim. injunction.	
Oct.2-74	Filed defts answer to show cause order to punish for contempt.	
Oct.2-74	Filed defts memo of law in support of motion to dismiss.	
Oct.1-74	Filed findings of fact & conclusions of law #1247, as indicated, & except to the extent hereinbefore modified, the findings & conclusions stated on the record at the close of trial are also adhered to. Settle a final order on three days notice..... BRIEANT, J. m/n	
Oct.1-74	Filed Memo-End. on show cause order of 9-6-74. Motion denied in all respects without prejudice to pltffs rights, etc..... So Ordered, BRIEANT, J.	
Oct 2-74	Filed Defts' Notice of Cross-Motion.	
Oct 2-74	Filed Memo-End on back of Defts' motion filed 10-2-74...The within motion was withdrawn without prejudice in Open Court on 10-7-74... So Ordered. Brieant, J.	
Oct 8-74	Filed letter from Paula Hoehen [illegible]	
Oct 8-74	Filed transcript of July 1 & 2, 1974.	
Oct.11-74	Filed Final Judgment & Order and findings of fact & conclusions of law that, the adjustment committee hearings given to pltff on May 23, 26, June 3, 6, 13, & 20, 1974 violate pltffs right not to be deprived of liberty without due process of law as indicated.....BRIEANT, J. Judgment Entered, 10-15-74. Clerk. m/n	
Nov 11-74	Filed defts Notice of Appeal to USCA from the Final Judgment ent. on 10-11-74... Notice mailed on 11-12-74 to: Stephen M. Latimer, Bronx Legal Services [illegible]	

[illegible], Clerk

By [illegible] Deputy Clerk

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

---x

CAROL CROOKS

Plaintiff

-against-

VERIFIED COMPLAINT

JANICE WARNE, individually and as Warden of the Bedford Hills Correctional Facility, CAPTAIN WOOLEY, individually and in her capacity as Captain at the Bedford Hills Correctional Facility, LIEUTENANT CRATTLE, individually and in her capacity as Lieutenant at the Bedford Hills Correctional Facility.

Defendants

---x

JURISDICTION

1. Jurisdiction of this Court is invoked pursuant to 42 USC 1983, 28 USC 1343 and the U.S. Constitution including but not limited to the Eighth and Fourteenth Amendments.

PARTIES

2. Plaintiff is a prisoner in Bedford Hills Facility and is serving a C-15 years after conviction.

3. Defendant Janice Warne is the Warden at the Bedford Hills Correctional Facility. She is responsible for the administration and operation of her respective facility and for supervising the conduct of Correction Department employees within their respective institutions. On information and belief, Captain Wooley is Captain at the Bedford Hills Correctional Facility for Women and Lieutenant Crattle is Lieutenant at same Correctional Facility in Bedford Hills, New York. They are responsible for supervising the administrative and operational aspects of this facility, and included herein as defendants.

FACTS

4. Inmate Carol Crooks was brought on disciplinary infractions on March 8, 1974 and sentenced after the Superintendent's Proceeding to sixty (60) days confinement in segregation.

5. On or about March 20, 1974 Carol Crooks was transferred to the Westchester County Jail, Grasslands, Valhalla, where she was confined in segregation with this segregated confinement being excluded from the sixty (60) day sentence ordered at Bedford Hills.

6. On May 9, 1974 inmate Carol Crooks was returned to punitive segregation at Bedford Hills whereupon she was told that she must complete the sixty (60) days disciplinary confinement, as the confinement at the Westchester County Jail was excluded from time spent in confinement.

7. On May 23, 1974 inmate Carol Crooks had completed her sixty(60) day confinement sentence and was due to be released on that day at 11:00 A.M.

8. On May 23, 1974 inmate Carol Crooks was advised by Captain Wooley and Lieutenant Crattle that she would be confined in segregation for the duration of her time at Bedford Hills.

9. Captain Wooley and Lieutenant Crattle advised inmate Carol Crooks that these were directions from Warden Warne.

PLAINTIFFS CLAIM

10. Inmate Carol Crooks was confined in segregation from May 23, 1974 without notice of charges, without a hearing and without an opportunity to confront the witnesses against her.

11. Defendants actions violates plaintiffs Eighth and Fourteenth Amendment rights and Plaintiffs rights under 42 USC 1983.

WHEREFORE plaintiff prays:

1. That the Court declare that Plaintiffs rights under the Eighth and Fourteenth amendments are being violated.

2. That the court renders a judgment releasing her from punitive segregation.

3. That the defendants be enjoined from placing her in punitive segregation without a hearing, etc.

4. For such other and further relief as to the Court may deem just and proper.

Carol Crooks

CAROL CROCKS

INDIVIDUAL VERIFICATION:

STATE OF NEW YORK, COUNTY OF BRONX

Carol Crooks, being duly sworn, deposes and says that deponent is the Plaintiff in the within action; that deponent has read the foregoing Complaing and knows the contents thereof; that the same is true to deponent's own knowledge, except as to the matters therein stated to be alleged on information and belief, and that as to those matters deponent believes it to be true.

Carol Crooks

Sworn to before me, this 30 day of May 1974

JEANNINE SMITH
Notary Public, State of New York
No. 31-4512010
Qualified in New York County
Commission Expires March 30, 1976

Jeannine Smith

FORM 253-C

9 - 3

5

STATE OF NEW YORK—DEPARTMENT OF CORRECTIONAL SERVICES

Bedford Hills Correctional
FACILITY

SUPERINTENDENT'S PROCEEDING
REPORT TO COMMISSIONER
(For Automatic Review Dispositions)

1) Name of Inmate Carol Crocks No. BP-5215

2) Date of Disposition of Charge March 3, 1974

3) Disposition Ordered To be confined for sixty (60) days. Loss of six (6) months good beh time. Referred to Adjustment Committee. To be released from Segregation on April 3, 1

4) Time Already Spent in Confinement or Other Disciplinary Action Taken in This Matter Prior to this Disposition (specify) Housed in Hospital first floor for the purpose of Observation. Time spent in this unit will be included in the total number of days in the Segregation Unit.

5) Summary of Evidence Written Reports and Interviews with the following people:

Doris A. Anstey, C.O.
Elizabeth Boggy, Sgt.
Helen LaPay, C.O.
Norvetta Wilkins, C.O.
Juanita L. Williams, C.O.
Eda Geser, R.N.
E.M. Thomas, C.O.
Mary L. Reid, C.O.
Elizabeth Carter, Sgt.
Agnus McCrudden, C.O.

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6) Inmate's Explanation

"I remain mute."

Francis E Clerk — Signature

Deputy Superintendent — Title

March 8, 1974 — Date

NOTICE TO INMATE . .

The foregoing report has been sent to the Commissioner of Correction today concerning the disposition ordered in the Superintendent's Proceeding on the charge against you dated February 3, 1974

You are hereby notified that the Commissioner of Correction will review this disposition and that you may communicate in writing to the Commissioner in connection with this matter.

8a

Plaintiff's Affidavit in Support of Motion For Preliminary Injunction.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------x

CAROL CROOKS

Plaintiff

AFFIDAVIT

74 Civ 2351
(CLB Jr)

-against-

JANICE WARNE, individually and as Warden of the Bedford Hills Correctional Facility, CAPTAIN WOOLEY, individually and in her capacity as Captain at the Bedford Hills Correctional Facility, LIEUTENANT CRADLE, individually and in her capacity as Lieutenant at the Bedford Hills Correctional Facility.

Defendants

----------x

CAROL CROOKS being duly sworn says:

I am the Plaintiff. I make this affidavit in support of my motion for a preliminary injunction releasing me from punitive segregation where I have been confined illegally since May 23, 1974.

On February 3, 1974 I awoke suffering severe pains in my eyes and mouth. I asked Correction Officers LaPay and Wilkens to send me to the sick unit. They refused and an argument ensued. Correction Officer Wilkens pushed me. I reacted in self-defense whereupon five Correction Officers attacked me. Subsequently fifteen officers in riot gear beat me while I knelt saying Muslim prayers. They then tied a sheet around my neck and dragged me through the campus to the segregation unit where they stripped me and left me.

On March 8, 1974 a Superintendents Hearing was held based upon the incidents of February 3, 1974 where I was administered the following punishments:

> "To be confined for sixty (60) days, loss of six (6) months good behavior time. Referred to adjustment committee. To be released from segregation on April 3, 1974."

A copy of the report is annexed as Exhibit A. Apparently I was to be released on April 3, 1974 because I was given credit for time spent in the hospital during February.

On March 20, 1974, I was transferred to the Westchester County Jail because of charges pending against me in Westchester Supreme Court. I returned to Bedford Hills on May 9, 1974 and was immediately placed in response to a written request I was told that I was to be released from segregation on May 23, 1974. A copy of that notification is annexed as Exhibit B.

On May 23, 1974 I was informed by Defendants Wooley and Cradle and Mr Smith, the Assistant Educational Principal, that I was to be a resident in segregation for the duration of my time at Bedford Hills that I was to loose various priveleges, but that I was not to suffer 24 hour lock-in, and that I must see the adjustment committee every week. I was enrolled in the College program at Bedford Hills and was taking nine credits toward my degree. One of the privileges lost was my right to continue in that program and demonstrate my rehabilitation.

Plaintiff's Affidavit.

At that time, May 23, 1974 I was not informed that Wooley, Cradle, and Smith were the Adjustment Committee, nor was I advised of the reasons why I am to be kept in segregation for the next twelve years. When I asked Captain Wooley, she told me that my behavior was satisfactory and that there were no new charges against me.

The next day I was told to lock in. I asked for my attorney and to see written authority for the sudden arbitrary change in status. I was told that my status was no longer that of a "resident" in segregation, and that I was to be locked in 24 hours a day. Seven male guards and seventeen women were then summoned to ensure that I returned to my cell, which I voluntarily did.

I have not seen the Adjustment Committee since May 23, 1974 and have been on twenty four hour lock-in since May 24, 1974. I believe that the Defendants actions in refusing to release me from punitive segregation on May 23, 1974 are arbitrary and capricious. I have been advised by my attorney that my right to due process of law has been violated. I also believe that I have been treated in a way that violates the Eighth Amendment prohibition against cruel and unusual punishment. I therefore request that I be released from segregation and placed with the general population.

Carol Crooks

CAROL CROOKS

Sworn to before me on
June 5, 1974 ... York

JEANNINE SMITH
Notary Public, State of New York
No. 31-4[illegible]010
Qualified in New York County
Commission Expires March 30, 1976

FORM 253-C

9 - 3

5

STATE OF NEW YORK—DEPARTMENT OF CORRECTIONAL SERVICES

Bedford Hills Correctional
FACILITY

SUPERINTENDENT'S PROCEEDING
REPORT TO COMMISSIONER
(For Automatic Review Dispositions)

1) Name of Inmate Carol Crooks No. BP-5315

2) Date of Disposition of Charge March 3, 1974

3) Disposition Ordered To be confined for sixty (60) days. Loss of six (6) months good behavior time. Referred to Adjustment Committee. To be released from Segregation on April 3, 19

4) Time Already Spent in Confinement or Other Disciplinary Action Taken in This Matter Prior to this Disposition (specify) Housed in Hospital first floor for the purpose of Observation. Time spent in this unit will be included in the total number of days in the Segregation Unit.

5) Summary of Evidence Written Reports and Interviews with the following people:

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Eda Geser, R.N.
E.M. Thomas, C.O.
Mary L. Reid, C.O.
Elizabeth Carter, Sgt.
Agnus McCrudden, C.O.

ONLY COPY AVAILABLE

Exhibit A.

6) Inmate's Explanation

"I remain mute."

James E Chase — Signature

Deputy Superintendent — Title

March 8, 1974 — Date

NOTICE TO INMATE . .

The foregoing report has been sent to the Commissioner of Correction today concerning the disposition ordered in the Superintendent's Proceeding on the charge against you dated February 3, 1974

You are hereby notified that the Commissioner of Correction will review this disposition and that you may communicate in writing to the Commissioner in connection with this matter.

EXHIBIT A

Exhibit B, Notification, Annexed to Foregoing Affidavit. 13a

REQUEST FOR INTERVIEW OR INFORMATION

TO: MS Woody DATE: 5/16/74

FROM: Carol Crooks NUMBER: 5895

BUILDING: Seg ASSIGNMENT: Seg

SUBJECT: State exactly what you want. Give full information so you can receive consideration.

would you please Sent over or cal my date to leave here (Seg) on March 21, 1974 at 10 or more A.M. I went to westch -r that make 47 days I was lock that 12 da and awake up I didnt do and is doing n that makes I come out of Seg May 22, 197 (Wed) this morning week. I would like To thank you for call my time in here (Seg) thank you

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14a

Exhibit B.

Whom have you seen or written to on this matter?

1. _____ DATE: _____

2. _____ DATE: _____

R. Terry — Carol Crooks 5815

OFFICER'S SIGNATURE — INMATE'S SIGNATURE

5/16/74 — 5/16/74

DATE — DATE

DO NOT WRITE BELOW THIS LINE

Carl - I need your release day as 23rd because if you will check the attached you will note your sentence is computed and counted from the 10th or at the end of the completion of a 24 hour per

Woolley 5/16

EXHIBIT B

ONLY COPY AVAILABLE

Date - Per your request I have checked on your Segregation dates including Feb 29 Leap Year 3/2/74 - 60 DAYS SEGREGATION!

Date of Incident

Feb		Mar	
4	1 day	9	34
5	2 "	10	35
6	3 "	11	36
7	4	12	37
8	5	13	38
9	6	14	39
10	7	15	40
11	8	16	41
12	9	17	42
13	10	18	43
14	11	19	44
15	12	20	45
16	13	21	46
17	14	All grounds running of 3/21/74	
18	15		
19	16	Returned to BHCJ 5/9	

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16a

Exhibit B.

	20	17		
	21	18	5/9	~~44~~
	22	19	10	~~45~~ 47
	23	20	11	~~46~~ 48
	24	21	12	~~47~~ 49
	25	22	13	~~48~~ 50
	26	23	14	~~49~~ 51
	27	24	15	~~50~~ 52
	28	25	16	~~51~~ 53
(Nov)	1	26	17	~~52~~ 54
	2	27	18	~~53~~ 55
	3	28	19	~~54~~ 56
	4	29	20	~~55~~ 57
	5	30	21	~~56~~ 58
	6	31	5/22	~~57~~ 59 Completed days
	7	32	5/20	60 - 2 months 5½
	8	33		

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----------X

CAROL CROOKS,

Plaintiff,

-against-

JANICE WARNE, individually and as Warden of the Bedford Hills Correctional Facility, CAPTAIN WOOLEY, individually and in her capacity as Captain at the Bedford Hills Correctional Facility, LIEUTENANT CRATTLE, individually and in her capacity as Lieutenant at the Bedford Hills Correctional Facility,

Defendants.

----------X

VERIFIED ANSWER

74 Civ. 2351(CLB)

Defendants, by their attorney, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, for their answer to the verified complaint herein, respectfully, upon information and belief, allege:

FIRST: Deny each and every allegation contained in paragraphs "1", "8", "9", "10" and "11" of plaintiff's verified complaint.

SECOND: Admit each and every allegation contained in paragraph "6" of plaintiff's verified complaint.

THIRD: Admit so much of the allegations contained in paragraph "2" of plaintiff's verified complaint as alleges that plaintiff is serving a term of 0-15 years as a result of a conviction for manslaughter, but deny so much of the allegations contained in the aforesaid paragraph as implies that this is her whole sentence, and defendants allege that plaintiff is

further serving two sentences of from 0-4 years running concurrently with the 0-15 year sentence, for conviction for possession of a dangerous drug, and an assault on a correction officer at Riker's Island Correctional Facility, respectively.

FOURTH: Deny so much of the allegations contained in paragraph "3" of plaintiff's verified complaint as alleges or implies that Captain Wooley and Lieutenant Cradle [Crattle in the complaint], are respectively second and third in command of the Bedford Hills Correctional Facility.

FIFTH: Deny so much of the allegations contained in paragraph "3" of plaintiff's verified complaint as alleges that defendant Warne's correct title is "warden".

SIXTH: Deny so much of the allegations contained in paragraph "4" of plaintiff's verified complaint as alleges that plaintiff's sole sentence after the Superintendent's Proceeding was a 60 day sentence to punitive segregation.

SEVENTH: Deny knowledge or information sufficient to form a belief as to so much of the allegations contained in paragraph "5" of plaintiff's verified complaint as alleges that for the period plaintiff was confined at the Westchester County Jail, she was confined in punitive segregation.

EIGHTH: Deny so much of the allegations contained in paragraph "7" of plaintiff's verified complaint as alleges that plaintiff was due to be released at 11:00 o'clock in the forenoon on May 23, 1974, and each such allegation.

AS AND FOR A FIRST, SEPARATE AFFIRMATIVE DEFENSE

NINTH: As a result of the Superintendent's Proceeding on March 8, 1974, plaintiff was sentenced to 60 day's punitive segregation, plus loss of good time, plus referral to the Facility's Adjustment Committee.

TENTH: On May 23, 1974, plaintiff met with the Adjustment Committee, consisting of Lieutenant Cradle, Captain Wooley and Education Supervisor Smith.

ELEVENTH: The purpose of said meeting was to determine whether plaintiff had yet evinced a sincere desire to conduct herself in accordance with the rules of the Facility.

TWELFTH: It was determined after meeting with plaintiff that the best interests of the Facility and the inmate population would not be served by placing the inmate back in the general population.

THIRTEENTH: The inmate was so informed and was further informed that she would be reviewed again in seven days.

FOURTEENTH: On May 28, 1974, plaintiff again met with the Facility's Adjustment Committee to review a report where it was alleged she refused to return to her room. The Committee imposed no additional penalty.

FIFTEENTH: Plaintiff met the Facility's Adjustment Committee on June 3, 1974, and as a result of her continued contemptuous attitude, her confinement was continued and action deferred for one week.

SIXTEENTH: Plaintiff again met with the Adjustment Committee on June 6, 1974, and action on her case was deferred, and she was scheduled for an appearance and review on June 13, 1974.

AS AND FOR A SECOND, SEPARATE AFFIRMATIVE DEFENSE

SEVENTEENTH: Upon information and belief, plaintiff has a history of continued assaulted behavior.

EIGHTEENTH: Upon information and belief, if, at the present time plaintiff is released to the general population, without a change in attitude, she would represent a danger to both other inmates and staff at this medium, security correctional facility, the only State facility for women.

AS AND FOR A THIRD, SEPARATE AFFIRMATIVE DEFENSE

NINETEENTH: Plaintiff fails to state a claim for which relief can be granted.

AS AND FOR A FOURTH, SEPARATE AFFIRMATIVE DEFENSE

TWENTIETH: This Court lacks jurisdiction over the subject matter, as no federal question is presented and none of plaintiff's rights were violated by defendants.

WHEREFORE, defendants respectfully pray this Court enter a judgment denying the relief requested in plaintiff's verified complaint, and dismissing the complaint.

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
By

STANLEY L. KANTOR
Assistant Attorney General
Office & P.O. Address
Two World Trade Center
New York, New York 10047
Tel. No. 488-5168

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

STANLEY L. KANTOR , being duly sworn, deposes and says:

That he is an Assistant Attorney General in the office of LOUIS J. LEFKOWITZ, Attorney General of the State of New York, and is duly authorized to make this verification.

That he has read the foregoing Answer and knows the contents thereof; that the same is true to his own knowledge, except as to matters therein stated to be alleged on information and belief, and as to those matters he believes it to be true.

STANLEY L. KANTOR

Sworn to before me this
14th day of June , 1974

Assistant Attorney General
of the State of New York

TRANSCRIPT OF RECORD OF PROCEEDINGS

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF NEW YORK

Reporters

----------x

CAROL CROOKS, :

Plaintiff, :

vs. :

74 Civil 2351

JANICE WARNE, individually and as Warden of the Bedford Hills Correctional Facility, et al., :

Defendants. :

----------x

Before:

HON. CHARLES L. BRIEANT, JR.,

District Judge

July 1, 1974
10:15 a.m.

APPEARANCES:

STEPHEN M. LATIMER, ESQ.,
Attorney for plaintiff.

LOUIS J. LEFKOWITZ, ESQ.,
Attorney General,
State of New York
BY: STANLEY L. KANTOR, ESQ., Assistant Attorney General.

THE CLERK: Carol Crooks vs. Janice Warne, individually and as warden of Bedford Hills Correctional Facility, et al.

MR. LATIMER: Plaintiffs are ready, your Honor. Our witnesses are downstairs. At this time --

THE COURT: Are the defendants here?

MR. KANTOR: The defendants are ready, your Honor.

Your Honor, before we start, I'd like to ask permission of the Court to have my summer assistant who is a student at Columbia sit at counsel table with me.

THE COURT: Certainly. What is the gentleman's name?

MR. KANTOR: Mr. Stanley Stein.

MR. LATIMER: I would also ask that Miss Jan Smith, who has been assisting me on this case as a para-professional, be allowed to sit at counsel table with me.

THE COURT: Certainly.

MR. LATIMER: Your Honor, at this time I have one witness, a Josephine Vaccaro, who can be taken out of turn. She will testify to certain adjustment procedures that she is familiar with. I would

ask her to be taken dirst and her testimony taken subject to connection, because she is on a work release program and she desires to go back to the employment as soon as she can.

MR. KANTOR: I have no objection.

THE COURT: Before you put any witnesses on the stand, however, I would like to make certain that we are clear as to what the facts are that are in issue here and we are not faced with the problem of taking cumulative evidence.

I understand you have 13 witnesses in the marshal's custody who are here on writs, and I believe I signed more than 13 writs for you, if I am not mistaken.

MR. LATIMER: That's correct, your Honor.

THE COURT: I think there were 17.

MR. LATIMER: Some of those women are at Matteawan, and I have conferred both with Miss Smith and the plaintiff, and the women that are at Matteawan, I have no intention of calling them. I have at the moment eight witnesses including the plaintiff that I do intend to call now.

THE COURT: We shouldn't have cumulative evidence because it puts a big burden on our facilities to have all of those witnesses who are in custody here

like this. So I would like you to confer with your adversary and see if you can narrow the issues so we don't need to keep a lot of people on hand pursuant to writs or keep a lot of other people taking care of them, which we don't need.

MR. LATIMER: I understand that, your Honor.

MR. KANTOR: May we be excused for a moment to confer?

THE COURT: Yes. I think you ought to confer right now. The Court will take a very brief recess, a five-minute recess.

(Recess)

MR. KANTOR: Your Honor, at this point, I would ask that all witnesses be sequestered. I have no witnesses in the courtroom.

THE COURT: Speak up, please.

MR. KANTOR: At this point I'd like to ask that all witnesses be sequestered.

THE COURT: Yes. Any non-party witnesses ought to be sequestered. I don't know if we have any place for them on this floor.

MR. LATIMER: Miss Vaccaro is the first witness.

THE COURT: The first witness doesn't need to be sequestered. Have you stipulated any facts?

MR. LATIMER: Your Honor, we have stipulated that we are not concerned in terms of the factual issues with any -- with the proceedings before May 23. We have stipulated that there was an incident on February 3 that resulted in a superintendent's proceeding, that that superintendent's proceeding resulted in a particular sentence which is -- the report of the proceeding is annexed to an affidavit that had been submitted in the case.

MR. KANTOR: That's correct.

MR. LATIMER: We are concerned with the practices of the adjustment committee and the events subsequent to May 23, 1974, and we have been unable to reach a stipulation obviously as to those particular practices.

THE COURT: All right. You are all clear that in accordance with our prior discussions when you were here in connection with your motion, this is treated as a trial combined with the hearing on a preliminary injunction.

MR. LATIMER: That's correct.

THE COURT: I ask you to not try facts that

are not in issue. Try the facts that are in issue only. Let's proceed with these witnesses as rapidly as possible so as to put less burden on supporting services here in the courthouse.

MR. LATIMER: My first witness is Miss Vaccaro.

THE COURT: You are clear that you are proceeding here only on federal grounds?

MR. LATIMER: Only on federal grounds.

THE COURT: If you have greater rights under the state regulations, you will have to secure those in the state court.

MR. LATIMER: I understand that, your Honor, and we are proceeding particularly in light of the recent Supreme Court decision which neither I nor counsel have had an opportunity to analyze.

THE COURT: The Court has read it. To say that I have analyzed it is prehaps stretching it, but it seems to have benefits in it for both sides. I think you ought to read it carefully.

MR. LATIMER: I intended to do that over the lunch hour, your Honor.

THE COURT: Let's start taking evidence.

MR. LATIMER: Miss Vaccaro.

JOSEPHINE VACCARO, called as a witness by the plaintiff, being first duly sworn, testified as follows:

THE COURT: Does someone have copies of the regulation under which the procedures were taken?

MR. KANTOR: Yes, your Honor.

THE COURT: Would you hand them up? Let Mr. Latimer see them, that they are in fact the regulations. Are you satisfied?

MR. LATIMER: Yes, I am, your Honor.

THE COURT: All right. You may examine the witness.

DIRECT EXAMINATION

BY MR. LATIMER:

Q Miss Vaccaro, are you presently an inmate in the Bedford Hills Correctional Facility?

A Yes, I am.

Q Would you tell the Court what you were convicted of and what your sentence was?

A Sales of narcotics and I received a zero to three sentence.

MR. KANTOR: Your Honor, would you direct the witness to speak up?

THE COURT: You see, I don't want to have the

air conditioning turned off, and I am going to ask all of you to please speak up. That goes for the lawyers and the witnesses.

THE WITNESS: I received an indefinite three-year sentence for sales of narcotics.

Q When are you scheduled to be released from Bedford Hills?

A The 22nd of July.

Q Are you presently on a work release program?

A Yes, I am.

Q Have you ever had occasion to be brought before the adjustment committee of the Bedford Hills facility?

A Yes, I have.

Q Can you tell the Court the incident that led up to that?

THE COURT: Give us an approximate time reference, first.

Q Can you tell us when?

A I have been in front of the adjustment committee several times. Which one, the last time?

Q Were you before the adjustment committee in April, 1974? Were you granted a furlough at any time?

A That was in May.

Q After you came back from that furlough, did you see the adjustment committee?

A Yes. I was immediately placed in segregation upon my return from furlough.

Q Was any reason stated to you why you were placed in segregation?

A No. I was told because quarantine was full, I had to be in segregation. When I asked to leave, they told me I had to stay there because I was waiting adjustment clinic.

Q Did you eventually see the adjustment clinic?

A Yes, I did, two days later.

Q In that two days, were you notified of any charges?

A No. They kept telling me that I should know why I was there.

Q When was the first time that you were notified of any reason that you were seeing the adjustment committee?

A When I walked into the adjustment clinic.

Q Can you tell us who served on that particular adjustment clinic?

A Miss Waterman. I don't remember the other two. There were two other civilian -- one was an officer and one was a civilian worker, I believe.

Q Can you tell us what happened when you walked into the clinic?

A Yes. She read a report from Mr. Bongiovanni, the officer who had picked us up at the station, and she asked me if I was drinking, and I said yes, and she said that I would have to be in segregation for six days.

Q The report she read from, who read the report, if you remember?

A She didn't read it out loud to me. She did quote some of what was in it because I had asked for it.

Q Who is she?

A Miss Waterman.

Q Had you seen a copy of that report?

A No, I had never seen a copy of the report and actually I never read the report myself, except for a few lines in it.

Q Did you see a copy of the report after the adjustment committee proceeding?

A No, I didn't.

Q Were you given the opportunity to confront the officer who made the report?

MR. KANTOR: Objection.

A No.

THE COURT: Yes, it calls for a conclusion.

Q Was the officer who made the report present in the adjustment committee room?

A No,she was not.

Q Did you ask to have her present?

A No.

Q What was the sentence of the adjustment committee at that time?

A Well, actually it was a week in segregation with a day off for good behavior, which was six days, and I left after six days.

Q Did you see the adjustment committee again?

A Yes, I did.

Q I mean at the conclusion of the six days.

A No. I saw them approximately about two or three weeks after this. I was called again to adjustment clinic for the same thing, and then I was told there that my furloughs would be taken away from me indefinitely.

THE COURT: I am sorry, I don't understand. The same thing --

THE WITNESS: For the same charge.

THE COURT: On the same occasion?

THE WITNESS: I was originally placed in segregation for being intoxicated. I was given a week. After that week I was called again about two or three

weeks later and at that time I was told that my furloughs were to be taken away indefinitely.

Q Were you given advance notice of this second appearance before the adjustment committee?

A No, I was not.

Q Were you told of the charges?

A No, I was not. Not until I entered the room.

Q Were you shown a copy of the charges when you entered the room?

A No, I was not.

Q How were you informed of the charges?

A Verbally.

Q Who was on this particular adjustment committee?

A I don't really remember.

THE COURT: The same people or different?

THE WITNESS: No, different.

THE COURT: But you were charged with the same event on the same date, is that so?

THE WITNESS: Yes, yes.

Q What was the disposition of the adjustment committee?

A That my furloughs would be taken away

indefinitely.

MR. LATIMER: I have nothing further of this witness, your Honor.

CROSS-EXAMINATION

BY MR. KANTOR:

Q Miss Vaccaro, do you remember approximately when it was that you returned from furlough and you were placed in quarantine?

A Yes, May 27.

Q May 27 of what year?

A 1974. Approximately 6 o'clock at night.

Q It couldn't have been May 24, could it have?

A May 24 was the day I went out on furlough. I had a three-day furlough and I came back on the 27th.

Q When you returned from furlough, is there some kind of procedure you have to go through?

A Yes.

Q What is the procedure?

A You call the officer -- you call the institution upon arrival at the station, which I did, and when the officer comes to pick you up, youare then taken to the hospital for a urinalysis and examination, and then placed in quarantine.

Q This happens every time you return from

your furlough?

A I imagine so. I only returned one time.

Q In other words, the placement in the special housing unit on 5/27 could have in reality have been as it was represented to you to be, that there was no room in the quarantine, isn't that possible?

A It's very possible, but if that was the case, I should have been let out in the morning.

Q You said you had to take a urinalysis, is that correct?

A Yes, I did.

Q For what purpose, if you know?

A Everyone takes one.

Q Why?

A For drugs and alcohol.

Q Were you ever informed of the results of your urinalysis on that day?

A On that day? I was informed when I went to the adjustment clinic.

Q What was your state of sobriety on that day, on 5/27/74?

A I was intoxicated.

Q You were drunk?

A Yes.

Q You knew you were drunk?

A Yes.

Q You knew that was a violation of the rules, right?

A Really, to be very honest, no, I didn't, because I was enver given any rules when I left the institution on furlough.

Q Had you been out on furlough before?

A No, I had not.

Q There is an inmate rule book, isn't there?

A I don't know. I have never received any.

Q They don't allow you to consume alcohol on the prison, do they?

A In the prison? Of course not.

Q You said that you met the adjustment committee on what date?

A About the 29th, I believe it was.

Q Who sat on the adjustment committee?

A The first time, Miss Waterman, I remember.

Q That was on the 29th?

A Yes.

Q Is that correct?

A Yes.

Q Who else was on the adjustment committee on

that day?

A I don't remember.

Q Excuse me?

A I don't remember. I know there was another officer and a civilian worker, but I am not sure who it was.

Q As a result of that meeting, you were locked in --

A Segregation.

Q -- segregation for six days?

A Yes.

Q When you went into the adjustment committee, how did you know that it was an adjustment committee meeting?

A I was in segregation building.

Q How did you know that this was an adjustment committee meeting? Is there something distinctive about it?

A Well, I was told I had to go to adjustment clinic.

Q Adjustment clinic?

A Yes. That's the term they use there for it, adjustment clinic. I was told I had to go to the adjustment clinic. I wasn't told why, but I was

informed I had to go. Why, I didn't know until I walked in the room.

Q What were you told when you walked in the room?

A They said, "Josephine, do you know why you are here?"

And I said, "Well, sort of."

Q So you sort of knew, didn't you?

A I knew I was intoxicated when I came to the institution.

Q And you knew that was wrong, right?

A To come in the condition I was in. Not because I drank.

Q Did you have a conversation with the adjustment committee?

A Yes, I did.

Q Would you tell us about the conversation?

A They asked me what provoked me to drink so much.

Q Did you deny that you drank so much?

A No, I didn't.

MR. LATIMER: Objection, your Honor. We are going far afield. There is no dispute that she was before the adjustment committee on that occasion and that

she was given time.

THE COURT: I would like to narrow the scope of the inquiry. However, Mr. Lattimer, you have tendered the issue as to the conduct of this adjustment committee generally, and counsel is entitled to develop the full picture. What I would really like to hear is evidence about Carol Crooks' case.

MR. LATIMER: That will be forthcoming with the next witness.

THE COURT: But the issue has been opened, and I will permit all of the surrounding facts having to do with this witness to be developed. As I understand it, she was punished twice for ehe same offense. That's the present state of the record.

THE WITNESS: That's exactly what happened.

THE COURT: Don't volunteer, please. You can answer the last question. I overruled the objection.

Q What else happened at that adjustment committee meeting? You say May 29?

A Yes. I asked them if my furloughs would be taken away at that time. She said they had no power to take away my furloughs, she had no power to take away my furloughs, it was up to the adjustment -- the temporary release committee to take away my furloughs.

At that time I also explained to her that I was waiting to go into work release, and if that would have any bearing on my work releast program, and she also told me that she didn't think it did. I was very satisfied with the answers that I received at that time, and I left.

Q You said there came a time when they asked you to meet the adjustment committee again?

A Yes.

Q When was that?

A The exact date I am unable to give you, but I believe it was about approximately two to three weeks after,after that first time at adjustment clinic.

Q Was it not June 14?

A It might have been. I don't know.

Q That's only two weeks ago.

THE COURT: Don't argue with the witness. If she doesn't remember, she can say she doesn't remember.

Q Who sat on that adjustment committee?

A I am not sure.

Q Did Lt. Guenther sit on that adjustment committee?

A Yes.

Q Did a correction officer detail?

A Miss Crab and Mr. Dale.

Q Who is Mr. Dale?

A He is a civilian worker, I think. A laundry officer or boss of the laundry where I used to work.

Q How did it come about that you knew you had to go to the adjustment committee on that day?

A When I went to my floor, the officer said they were looking for me in the adjustment clinic.

Q You then went to the adjustment clinic, is that right?

A Yes.

Q What were you told when you went in there?

A Into the room?

Q That's right.

A I asked them what I was there for.

Q What did they say to you?

A She asked me if I -- about the charge about drinking, coming back from my furlough drinking. I said "Yes, I have been already punished for that. I was in segregation for a week for it." So I said --

Q Who is she?

A Guenther, Lt. Guenther?

Q Do you know? Was it the chairman of the adjustment committee?

A I don't know if she is chairman or not. I know it's the same or e's name you just mentioned. Lt. Guenther?

Q Go ahead.

A She said that she had to go over it again, the charge sheet, and she did. At that time again they asked me why I was drinking, and I told them why, and then she asked me if I would be given another furlough, would I drink again.

Q What did you say?

A I said no. Then I asked them about work release, and she asked me if I would go into work release, would I drink, and at that time I told her that I knew the difference between a work release program and furlough, and that I had no knowledge that I wasn't supposed to drink as much as I did. I know it was wrong, I am not ignorant, but I did come back drunk. There is no coming around that.

Q At this second adjustment committee proceeding, was there a disposition?

A Yes. She told me that my furloughs would be taken away from me indefinitely.

Q Indefinitely? Indefinitely now being about six weeks, is that correct?

A Yes.

MR. KANTOR: I have no further questions.

THE COURT: Any redirect?

MR. LATIMER: Just one or two questions.

REDIRECT EXAMINATION

BY MR. LATIMER:

Q You told Mr. Kantor that the adjustment committee told you the results of your urinalysis?

A After I asked them, yes.

Q Which adjustment committee, the first or the second?

A The second.

Q At the first adjustment committee, did you have any inkling of the results?

A No, I didn't.

Q Let me ask you why you believe you were brought to the adjustment committee the second time?

MR. KANTOR: I object to that, your Honor.

THE COURT: There is no basis for it. She would have to tell the facts which led to her belief. If she has a belief, she would have to tell what caused it, what is the basis for her belief.

THE WITNESS: Well, I believe it is because when I was taken to adjustment clinic the first time, I don't believe they had the urinalysis report, because that takes a while to come back.

Q But you were punished anyway?

A Yes.

THE COURT: What is your basis for believing that they brought you back a second time because they received your urinalysis?

THE WITNESS: Because they never told me anything about a urinalysis report the first time. They had just asked me verbally if I had been drinking, and I said yes.

MR. LATIMER: I have no further questions.

THE COURT: Anything else of this witness?

MR. KANTOR: Just two more questions, your Honor.

RECROSS EXAMINATION

BY MR. KANTOR:

Q You mentioned initially that adjustment committee can't take away furloughs?

A Temporary release committee.

Q Then how did the adjustment committee take away your furlough?

A I don't know.

Q Isn't it possible in fact that they didn't take away your furloughs?

A Well, whether it was possible or not, I was still told that the woman was taking away my furloughs indefinitely.

Q She was taking away your furloughs indefinitely?

A Yes.

Q She didn't say she was recommending a change in program eliminating your furloughs?

A No, she didn't.

MR. KANTOR: I have no further questions.

THE COURT: All right, you are excused.

THE WITNESS: Can I say something before I --

THE COURT: You can't volunteer information.

THE WITNESS: It is not information. I just don't want any repercussions to me --

THE COURT: I assume if you testified truthfully, there will be no repercussions.

MR. LATIMER: I would ask that the marshals make arrangements to have this witness returned to Bedford Hills so she can resume the work release program --

THE COURT: That will be for the marshal to work out the best I can. You put quite a burden on him

and he will do the best he can. I don't think he is going to make a special trip for one person. When we get a load to go, they will go. Would you please informthe clerk and the marshal of your order of witnesses?

MR. LATIMER: I have already done that.

THE COURT: Because I had a request here that you do that. Let's proceed.

(Witness excused)

MR. LATIMER: The second witness is Anna Sanchez.

A N N A S A N C H E Z , called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LATIMER:

Q Are you presently an inmate in the Bedford Hills facility?

A Yes, sir.

Q Can you tell the Court -- it would help if you would speak up. The acoustics in the place are kind of terrib.e. Can you tell the Court what you were convicted of and what your sentence is?

A I was convicted of a homicide. I got six

years.

Q Do you have a scheduled release date?

A Excuse me?

Q Do you have a scheduled release date?

A I am supposed to go to the board in November, '74. Hopefully for release in December.

Q You have had some -- have you had any disciplinary infractions while you have been at Bedford Hills?

A Yes, I have.

Q Do you know Carol Crooks?

A Yes, I do.

Q On May 23, 1974 where were you housed in the institution?

A In segregation.

Q On May 23 did you observe anything with respect to Carol Crooks?

A Yes, I did.

Q Can you tell the Court what you saw?

A Well, I got out to go to the shower, about 10, maybe 11, and when I came out of the shower, there were two men standing, two policemen standing behind the door, close to the wall --

Q Behind which door?

A Behind the door that leads to the corridor where the shower is. That's the left door.

Q What else did you see at that time?

A I just saw the men standing there and Mr. Smith was inside.

Q Who is Mr. Smith?

MR. KANTOR: Objection unless this is somehow connected up.

THE COURT: I assume he is going to connect it.

A Mr. Smith is -- what would I call him? He is in the school and he is in the release committee, temporary release committee.

Q Did you see anybody having a conversation with Carol at that time?

A No, they were in the office, in the interview room. I just saw the two men.

Q Did Carol come out of the interview room?

A Yes.

Q Then what happened when she came out?

A Nothing. She went inside to her cell.

Q Did you speak to her at any time on the 23rd?

A In the evening.

Q Was Carol locked in her cell?

A Yes.

Q On the 23rd?

A Yes.

Q Was she allowed to be in the corridors at all?

A Yes, she was cleaning in the morning.

Q Did you have a conversation with Carol?

A Yes.

Q Can you tell us what Carol said to you and what you said --

MR. KANTOR: Objection, hearsay.

THE COURT: Sustained. Unless you can show the presence of someone connected with the defendants or their agents, it would be pure hearsay. Are you contending anyone else was present?

Q Did you see Carol have a conversation with any of the guards or -- did you see Carol in conversation with any of the guards or anybody from -- or any of the officials of the administration on the 23rd?

A I saw Mr. Smith, but I didn't see them having a conversation. I knew they were inside, both of them, so they must have been having a conversation.

Q They were inside where?

A In the interview room.

THE COURT: That we have already. I have

taken that evidence, that they were inside the interview room together.

Q Did you see Carol on the 24th?

A Yes.

Q Can you tell us the circumstances that you saw her on the 24th?

A She was all right.

THE COURT: Speak up, please.

THE WITNESS: She was all right. She was cleaning the dishes, something like that.

Q Was she in her cell or was she in the corridor?

A She was in the corridor.

Q Do you know on the 23rd or the 24th, and answer this if you know, whether she was supposed to be locked in her cell at all times?

A Everybody is supposed to be locked in. But like sometimes we volunteer to clean the corridors, to do the dishes, and that is when we come out or when we come out for showers.

MR. LATIMER: I have no further questions of this witness.

THE COURT: Any cross-examination ?

MR. KANTOR: Very briefly.

CROSS-EXAMINATION

BY MR. KANTOR:

Q Did you happen to observe an incident on May 24 where there was some altercation between the plaintiff and the officials of the institution?

A No.

Q Did any men appear in the segregation corridor on that day and at that time?

A If that's the date, I was in the shower, the 23rd or 24th, I am not sure which day it was, but I know I seen two men. It was either on the 23rd or 24th.

Q Let me rephrase the question: At some point on May 24, the day after Carol met with the adjustment committee, did any male correction officers appear in the segregation corridor?

A I didn't see them. They were outside. You know, they were -- the men came and they were outside and one of the officers didn't let the men in. There were about six of them, something like that, and one of the officers stood by the door and didn't let the men in.

Q Can you tell me, to your knowledge, do you know what caused the men to be called down?

A No, I do not.

Q Was there some argument, did you hear or observe any argument between Carol Crooks and the correction officers?

MR. LATIMER: Objection.

THE COURT: Overruled.

A No, I didn't.

Q You said on May 24 you observed Carol in the corridor and that she was doing dishes, is that correct?

A Yes.

Q How long was she in the corridor on that day?

A She was there a couple of hours.

Q How many?

A A couple of hours.

Q How many?

A A couple of hours.

Q How many hours?

THE COURT: Two, is the question. Don't shout at the witness. Two hours? Three hours?

THE WITNESS: Maybe two, an hour and a half.

Q How did it come about that she went back into her room?

A How did she what?

Q Did she go back into her room at some point?

A Yes.

Q When?

A When the officer told her to go in back in the room.

Q There was no argument?

A No.

MR. KANTOR: I have no further questions of this witness -- I am sorry, one more.

Q What is your normal cell? Where do you normally -- where are you normally housed?

A Right now I am down in the work release program.

Q When did you start on the work release program?

A Two months ago.

Q Prior to two months ago where were you housed?

A Before that?

Q Yes.

A Upper 113, C and D.

Q Is that the same place that Carol Crooks is normally housed?

A Yes.

Q And Carol Crooks was on the same unit that you were?

A Yes.

Q Are you friends with Carol?

A We are not too close, we just acquaintance.

MR. KANTOR: No further questions.

THE COURT: Anything else?

MR. LATIMER: I have nothing further of this witness. Again, this witness is also on the work release program --

THE COURT: Mr. Latimer, I am sure the marshal's office will do the best they can to expedite the return of any witnesses to where they ought to be, but I specifically decline to give them any specific directions. They are doing the best they can under difficult circumstances.

MR. KANTOR: Your Honor, may we approach the bench on that problem? I think we have a solution.

(Witness excused)

(In the robing room)

MR. KANTOR: I wonder if we can have the conversation off the record?

THE COURT: I prefer not to in this case unless there is something of a real emergency nature that requires it be off the record. I have asked my law clerk to give you a copy of the June 26 discussion of the

Supreme Court of the United States in Wolff v. McDonnell. I trust during the recess you will take a moment to read it. As I said earlier, each of you will extract benefits from it. What is the difficulty?

MR. KANTOR: There is no difficulty. I have a solution to the marshal's problem and Mr. Latimer's problem.

THE COURT: I can't [illegible] it. It is one of those things, gentlemen.

MR. KANTOR: The superintendent informs me that she has a microbus available which can come down at the end of the day, and if the marshals are willing to release these people into the custody of the correction officers, they can be back sometime after dinner.

THE COURT: All right. I am going to ask the marshals' deputy to confer directly with the superintendent, and whatever arrangement can be made, I will satisfy the write and to those who have testified, and the marshal who will handle his arrangements directly with your people. That is perfectly all right.

It seems to me that you might be able to get a stipulation as to some of the facts which I trust

are not contested. The weight to be given to them may be of some significance, but so far I don't think we have had anything that you could honestly traverse, have we? Particularly these people who are on work release ought to be given an opportunity to hold their jobs.

MR. KANTOR: The point is that the only thing we are going to traverse is the fact that the adjustment committee made any determination that these people would no longer be entitled to work release. They can't make that determination. It is beyond their competence.

In point of fact, the practice at the institution is, as I have testimony that will show, including exhibits, that these people -- it was merely recommended to the temporary release committee that these people be taken off work release.

MR. LATIMER: Nobody is taken off work release.

MR. KANTOR: I'm sorry, furloughs. The furloughs be suspended.

THE COURT: Is that an issue which is before me under these pleadings?

MR. KANTOR: I don't believe so.

MR. LATIMER: No. The purpose of Miss

Vaccaro's testimony is merely to show another instance of the adjustment committee's procedures.

THE COURT: Your client is in on a superintendent's proceeding, as I understand it?

MR. LATIMER: But it is our contention that she should have been released at the end of the 60 days. She was referred to the adjustment committee and it is our contention that there was an adjustment committee meeting concerning her during the period that she was in segregation prior to May 23 and that anything else is a new proceeding.

THE COURT: I think we ought to stick with those essential issues, really. I am not barring you from putting in any proof that either of you thinks is relevant, but I don't like to take cumulative or non-controverted matters, that is all. I am particularly concerned, I don't want to disrupt our own U. S. Marshal's functions or the functions of the state people, and if some of these witnesses have jobs, good attendance at the jobs is an essential thing or the employer wouldn't cooperate any more.

MR. LATIMER: I assure you that they were brought down -- if they had said to either me or to Miss Smith or to whoever else was investigating that they

didn't want to come down because they were afraid of their jobs, I would never have dreamed of bringing them down. Their concern now is getting them back. I don't know of any others who are on the work release.

THE COURT: I am sure the marshal will do the best he can, and I am sure they will welcome the cooperation of the superintendents. My suggestion is that the deputy marshal confer with the superintendent and we keep proceeding as rapidly as we can here.

MR. LATIMER: There is just one other request. Miss Crooks informs me that she left some of her legal papers downstairs that are relevant to this particular case, and if there is a way that they can be brought up with the next witness, both I and she would appreciate it.

THE COURT: I would assume there is no problem with that. I will ask the clerk to see if that can't be worked out. Let's proceed.

(In open court)

J O Y C E S A N Z O N E , called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LATIMER:

Q Are you presently an intimate in the Bedford Hills facility?

A Yes.

Q Can you tell the Court what you were convicted of and what your sentence is?

A I was convicted of forgery in the second degree and my sentence is five to ten years.

Q When are you scheduled to be released from Bedford Hills?

A September 25, this year.

Q On or about May 23 of this year, were you confined to the segregation unit?

A Yes, I was.

Q Can you tell -- prior to your confinement in the segregation unit, had you seen the adjustment committee?

A Yes, I did.

Q Will you tell the Court the circumstances leading up to when you saw the adjustment committee?

A I was charged with mowing the lawn out of bounds.

Q Will you tell the Court exactly what happened

on that occasion?

A The adjustment clinic told me that I had been reported by assistant deputy Salmon for being off of my -- out of bounds. I explained that I had not been advised that I couldn't work in my capacity as yard crew member beyond a certain point in the facility. I also explained that a correction officer who was responsible for supervising me had submitted a written report attesting to the fact that she had never advised me not to go.

MR. KANTOR: Your Honor, I object at this point on the grounds of relevance. I don't see how this is relevant to any issues before this Court in this case.

THE COURT: I will take it subject to connection.

Q As a result of this alleged mowing the lawn out of bounds, you went before the adjustment committee, is that right?

A Yes.

Q Did you receive any advance notice that you were going before the committee?

A No, sir.

Q At the time you walked through the door

to the adjustment committee room, were you aware of the charges that were against you?

A Not until I walked into the adjustment committee room.

Q What happened when you walked into the room?

A They proceeded to read the complaint rendered by assistant deputy superintendent Salmon.

Q Did you ever see a copy of that complaint?

A No, I didn't.

Q What happened after they read the complaint?

A I asked them, didn't they have a report from the supervising correction officer who is in charge of the yard crew, and the lieutenant who was sitting on adjustment replied yes, she did. I asked her would she read it to me.

She proceeded to read it to me and then sought to misconstrue the contents, so I asked that the correction officer be called for clarification. She told me that it didn't matter what the correction officer said, I was out of bounds, and that was two days in segregation.

Q How did she misconstrue the contents?

A The correction officer stated, I can't remember verbatim, but something to the effect that she

didn't call me to work, but that I had been an excellent worker, she had not called me on several other days, but she was aware of my working out in the yard, that I had worked outside of east wing, one of the buildings at the facility, that she had no complaints about my work and further stated that she had not advised me not to go to any given area.

The lieutenant tried to misconstrue this by saying that she wrote a report on me because she didn't inform me to work that day. That was why I requested that correction officer to be called for clarification. They refused to do this.

Q What was the disposition of the adjustment committee --

A I was given two days locked in segregation.

Q That was on May 23?

A Yes.

Q Did you see Carol Crooks on May 23?

A I did.

Q Where did you see her?

A She was in the day room when I first came in and went into adjustment clinic and then she was walking up and down the corridor, and she was sitting in the day room. She was also in the other corridor

speaking to a resident.

Q What was she doing in the day room?

A Just sitting down.

Q Was she doing any kind of work?

A No.

Q What was she doing in the corridor when you saw her?

A Just walking up and down, talking to the residents.

Q What time of day was this that you saw her?

A I believe I was admitted at 2:10, somewhere between 2 and 2:30 in the afternoon.

Q This was in the afternoon that you saw her walking up and down the hall?

A Yes.

Q At that time did you hear anybody tell her to lock in?

A Not at that time, no, sir.

Q Of your own knowledge, do you know when she locked in on that day?

A At 10 p.m.

Q Did you have any conversations with Carol on that day?

A Yes, I did.

Q Can you tell us the terms and substance of the conversation you had with her?

A Yes, I can.

MR. KANTOR: Objection. Hearsay.

THE COURT: Yes, sustained, in the absence of a showing that defendants or their agents were present at the time of the conversation.

Q Did you see Carol talking during May 23 with any correction officers?

A Not on the 23rd.

Q Did you see Carol on May 24, 1974?

A Yes, I did.

Q When was the first time you saw her that day?

A In the morning. She helped serve breakfast.

Q Did you see her later on on that day?

A Yes. She was walking up and down the corridors.

Q What time of day was that, if you remember?

A All day long.

Q To your knowledge, was she locked into her cell during the morning and afternoon of May 24?

A No, sir, she was not.

Q I will call your attention to the early evening of the 24th and ask where you were.

A I was locked in my room.

Q Did you see or hear anything with respect to Carol Crooks?

A Yes, I did.

Q Will you tell the Court what it is that you heard or saw?

A Well, the first time that I became aware of anything happening with Carol, conversation or otherwise, was when I knocked on my door and asked the correction officer when we were coming out for our normal one-hour exercise period which should have commenced after the supper meal was finished.

She told me that we couldn't come out until such time as Carol Crooks decided to go into her room.

So I responded by asking her what Carol Crooks had to do with the other women, as well as myself, getting out for one hour exercise period, and she told me that I would have to take that up with the administration, but that none of us could come out of our rooms until such time as Carol were to go into her room.

I then called Carol to the door and asked her what the problem was, and Carol proceeded to tell me that they wanted her locked in her room --

MR. KANTOR: Objection.

THE COURT: Yes. I can't take the hearsay, Mr. Latimer. I will let her say she had a conversation with Miss Crooks, but she can't give the substance of the conversation.

Q Did you hear Carol in conversation with any of the correction officers or prison officials that were in the unit at that time?

A Yes. I heard her speak with C. O. Doyle and say something to the effect that she wouldn't go into her room until such time as someone gave her in writing the fact that she had to go into her room and why she had to go into her room.

All she was asking, I believe she said "All I am asking for is something in writing, and then I will go into my room."

MR. KANTOR: I object to what she believes.

Q Is that what you heard?

A That is what I heard.

THE COURT: I will take it that this witness is giving us her best recollection of what she heard.

Q What was Doyle's response?

A Doyle said something about Captain Woolley,

but I really couldn't hear it, it was kind of muffled because the residents started talking about coming out for their hour.

Q Then what happened?

A Shortly thereafter one of the residents said "Look out the window," and we all rushed to our windows. I was in a room facing the front side of segregation, and we saw a group or several groups of female correction officers coming from several directions, some from the main building, some from down the hill from the prison area. We counted a total of 17 correction officers. As a matter of fact, I listed their names.

MR. KANTOR: Objection to what "we" counted unless "we" is identified.

THE COURT: I assume the witness is indicating that she participated in the counting. Objection overruled.

Q The 17 correction officers, what section were they?

A 17 females and there were seven male correction officers also.

Q The segregation area at that particular time when you saw these people coming into the area, was it quiet or noisy?

A It was quiet.

Q Did she eventually come into the segregation area?

A Some of them remained outside on the walk and some of them came in. A few of the men came in with helmets on. Some were carrying their helmets and they were standing outside.

Q At that time did you hear or see any conversation between Carol and any of the prison officials?

A We couldn't hear any conversation at all because at this point the correction officer closed the door to the segregation corridor.

Q Where were these 24 people?

A In the foyer area and some were outside on the walk. Also a car had pulled up with a male driver and I think there was one correction -- I know there was one correction officer in the front seat.

Q What was Carol doing during this time?

A We couldn't hear her saying anything, and I couldn't see her from my room.

Q Did it sound like there was any unusual noise at that time?

A There was no noise. This is why everybody got quiet. We were trying to listen to hear what was

going on, and we couldn't hear anything. There was no arguing, nothing loud, because we certainly would have heard it.

Q Did you hear Carol making any loud noises or unusual noises?

A No. The next time I heard Carol was when she was walking past my door, she laughed and said "Well, I am going into my room."

Q To your knowledge, did she?

A Yes.

Q Joyce, are you what is known as a jailhouse lawyer?

A Yes, I am.

Q Are you familiar with a superintendent's proceeding involving Carol?

A Yes, I am.

Q Did you seek permission to represent Carol at that superintendent's proceeding as a counsel substitute?

A Yes, sir, I did.

Q I will show you a document --

THE COURT: Mark it for identification.

(Plaintiff's Exhibit 1 was marked for identification)

Q -- and ask if you can identify it.

A Yes, it is a memorandum I sent to Mrs. Warne.

MR. LATIMER: I will show it to counsel.

MR. KANTOR: I have no objection to this, your Honor.

THE COURT: Received in evidence.

(Plaintiff's Exhibit 1 was received in evidence)

(Plaintiff's Exhibit 2 was marked for identification)

Q What was the subject matter of the memorandum that you sent to Miss Warne?

A I had received a written request from Carol requesting --

MR. KANTOR: Objection, your Honor. The exhibit speaks for itself.

THE COURT: Sustained. Yes.

Q Were you granted permission to act as a counsel substitute at the superintendent's proceeding?

A Permission was denied.

Q I will show you a document marked as Plaintiff's Exhibit 2 for identification and ask if you can identify that?

A Yes. This is the response I received from

Miss Warne.

Q That's the response that denied you permission to represent Carol?

A Yes, it is.

MR. LATIMER: I will show it to counsel and then offer it.

MR. KANTOR: No objection.

(Plaintiff's Exhibit 2 was received in evidence)

Q When were you released from segregation?

A On the 25th.

Q At approximately what time?

A Approximately the same time as admission. I think it was about 2, 2:30.

Q During the day on the 25th, did you see Carol at all?

A Yes, I did.

Q Where was she?

A She was locked in her cell.

Q Did you see her in her cell?

A Yes, I did.

Q Did you see her in the corridors or in the day room at all on the 25th?

A No, she was not permitted out of her room.

Q But she was in the corridors and in the day room on the 23rd and 24th?

A Yes, she was.

MR. LATIMER: I have no further questions.

CROSS-EXAMINATION

BY MR. KANTOR:

Q You said that you were in segregation on May 23, is that correct?

A Yes, sir.

Q That was the result of an adjustment committee proceeding?

A Yes.

Q The adjustment committee found that you had been out of bounds, is that right?

A Yes.

Q And you said that you saw Carol Crooks walking up and down the hall?

A Yes, I did.

Q And sitting in the day room?

A Yes.

Q Will you describe for me what the day room is?

A It's a room about 15 by 20 feet wherein there are several tables and chairs, and I believe

there are two bookcases, one on each side.

Q This is in the segregation unit?

A Yes, it is.

Q Is that normally occupied by inmates during the day?

A No, it is not.

Q Is it ever occupied by inmates during the day?

A It is occupied by inmates usually in the evening after the supper meal when we are out for the one-hour exercise period.

Q It's only at that time that that day room is used?

A Unless seg is crowded, then I would assume they might let a resident out for an hour for her hour exercise in the daytime, although --

MR. KANTOR: I object to the assumption.

THE COURT: Yes. Strike it out.

Q Did you consider it unusual to see an inmate walking around the corridor and sitting in the day room during the day?

MR. LATIMER: Objection.

THE COURT: All right, I will sustain the objection.

Q Can you tell me over the years that you have been in Bedford Hills, have you had occasion to be in segregation unit frequently or occasionally?

A I have never been in seg prior to May 23, since being brought back this trip. I am a parole violator.

Q Prior to that?

A Prior to that, yes, I was in seg.

Q At any time during any period that you had been in seg other than May 23 and May 24, had you ever seen any inmate wandering around the seg corridor or sitting in the seg. day room other than during the hour exercise period?

A Segregation never had a day room before, sir, when I was in Bedford.

Q All right, this trip, were any other inmates at any time out in the corridor or in the day room or in the exercise yard or anyplace else other than their one-hour exercise period?

A No, sir.

Q Did you ever ask to be let out other than for your one-hour exercise period at any time that you were in segregation?

A Yes, I did.

Q What were you told?

A That the one-hour exercise period was not until after supper.

Q How long on May 23 was Carol out of her cell that you saw or know about?

A From the time I arrived Carol was out of her cell.

Q What time was that?

A I arrived at somewhere between 2 and 2:30 p.m.

Q She went into her cell I understand at 10 p.m.?

A Yes, the regular lockup time.

Q So she had an exercise period of approximately seven and a half hours on that day?

A Yes.

Q Let's address ourselves to the day of May 24, Do you know of your own knowledge what time Carol left her room?

A On the 24th?

Q In the morning, yes.

A Carol was already out when I woke up.

Q Were any other inmates out?

A No, sir.

Q Carol was the only one? What was she doing?

A She was standing at another resident's door

talking.

Q To the other resident?

A Yes.

Q Did there come a time during that day when she was locked in?

A Not until evening.

Q During that entire day were any ohter inmates in the segregation unit let out of their cells for a similar length of time?

A Not for a similar length of time. I believe one other resident was allowed out to wash the dishes after the lunch meal.

Q It's normal for residents to wash the dishes in the segregation unit?

A If they volunteer to do so.

Q Is it normal for the inmates in the segregation unit to wash the dishes --

MR. LATIMER: Objection, your Honor. She has already answered that question.

THE COURT: I assume the answer is yes, but it is not clear to the Court whether this is a commonplace experience or whether this is a rare occasion.

MR. LATIMER: I will also submit to the Court that she has spent at least on this trip a total

of two dsys in segregation and --

MR. KANTOR: I will withdraw the question.

THE COURT: All right, the question is withdrawn.

Q You said you saw 17 female and seven male correction officers coming down towards the segregation building, is that correct?

A 17 female and seven males.

Q They were coming toward the segregation building?

A Yes.

Q Did they enter the segregation building, to your knowledge?

A To my knowledge, most of them entered the segregation building.

Q How many?

A I could only estimate. I couldn't --

Q How do you know most did?

A Because I could see that there was mabe eight or nine outside of the building on the walk and there was one leaning up against a state car talking, one female, there was a male driver in the car and a female correction officer also seated in the car.

Q I count that as being 12 outside, which means

only five went inside.

A I didn't count the two in that count, sir, that were in the vehicle. It would be --

Q Most of them came into the building, is that right? Where were they?

A I would say at least ten came into the building.

Q Where were they?

A I don't know if they went down the other corridor. I know they didn't come onto our corridor.

Q Let's see if we can do some logistics here.

MR. KANTOR: May I approach the witness.

THE COURT: What do you want to do?

MR. KANTOR: I want her to draw a diagram of the segregation unit and how it is laid out because I am having trouble seeing where everything is and how it works.

MR. LATIMER: One question, your Honor --

THE COURT: Haven't you got a better source for that evidence than to bother this witness on cross-examination for it? Suppose she didn't draw it to your liking. What did you want to say, Mr. Latimer?

MR. LATIMER: No questions, your Honor.

THE COURT: I will permit her to draw the diagram, if you want.

MR. KANTOR: I will withdraw the recess, your Honor.

THE COURT: You have members of the staff here who can give you a diagram.

MR. KANTOR:

Q You were in your room, is that correct?

A Yes, I was.

Q From your room can you see the day room?

A No, I can't.

Q And you can't see the other corridor? You said there was another corridor?

A Yes, but there is a foyer. There is a walk going up into the segregation building. When you enter there's a day room straight ahead, there is the officers' area right on your right and there is a corridor beyond that on your right. There is also a corridor on your left. I am in the corridor on your right, I believe I was in the third room on the right of that corridor, facing the front of the building. I could see the correction officers entering the front of the building.

Q None of them came in your corridor, is that right?

A None of them came on to my corridor.

A She was outside in the day room area at that time.

Q You testified that Carol at some point came back into her room or cell, is that correct?

A Yes, she did.

Q About how long after the corrections officers, the 17 females and the seven male corrections officers, came down to the seg unit did they come back into her room?

A It was a very short period.

Q A minute? Two minutes? Five minutes?

A Five minutes at the most.

Q Prior to that time she hadn't been back in there?

A She had come down tothe corridor to talk to us a couple of times.

Q But she hadn't gone back into her room?

A No.

Q You testified that you were a jailhouse lawyer. I take that to mean that you represent yourself to be somewhat of an expert in prisoners' rights and assist prisoners with their legal rights, is that correct?

A I am versed in correction law.

Q You are versed in correction procedure?

A Yes.

Q Are you versed in superintendent's proceedings?

A Yes, I am.

Q You have read the regulations concerning that?

A Yes, I have.

Q And they are generally available to the population, are they?

A Yes.

Q Is there any provision for -- in the superintendent's proceeding for a counsel substitute other than a member of the staff?

A No, sir, but --

MR. KANTOR: Thank you, that is all.

THE COURT: Is there anything else for this witness?

REDIRECT EXAMINATION

BY MR. LATIMER:

Q I take it that you have read cases concerning procedures, Supreme Court and federal cases concerning procedures for disciplinary proceedings?

A Yes, I have.

MR. KANTOR: I object at this time. She is not qualified as an expert in law any more than --

THE COURT: I will take the answer. The question has been opened up as to whether she was a jailhouse lawyer, by both sides.

Q Have you read cases which describe the "due process" procedures for disciplinary proceedings?

A Yes, I have.

Q Is it on the basis of what you have read in those cases that you submitted your request to Mrs. Warne?

A Yes, it is.

Q When you left the segregation area on the 25th after that, did you have any conversations with the prison authorities concerning the conditions in Carol Crook's cell?

A No.

MR. KANTOR: I object, your Honor, improper redirect.

THE COURT: It is improper redirect. Is this relevant? If it is something you overlooked, I will let you reopen it.

MR. LATIMER: I am sorry, your Honor. The question has been answered in any event. I have nothing further.

THE COURT: Anything further for this

witness?

MR. KANTOR: One or two more questions.

RECROSS EXAMINATION

BY MR. KANTOR:

Q You mentioned that you read cases, federal cases, concerning the right of inmates to certain procedural formalities prior to the imposition of discipline?

A Yes.

Q Did you read Sostre v. McGinnis?

A Yes.

Q Anything in there about allowing inmates --

MR. LATIMER: I object. I have a hard time at this point remembering exactly what's in --

THE COURT: The objection should not be taken until the full question has been framed. I will let counsel frame the question first. Then if you feel you must object, you may.

MR. KANTOR: I will withdraw that question.

Q Did you rely on Sostre v. McGinnis in making your determination that Carol was entitled to have you to represent her at the --

A No, sir, I didn't.

Q Did you read U. S. ex rel Walker v. Mancuso?

A Yes, sir.

Q Did you rely on that case in making the determination?

A No, I didn't.

Q Did you read Wright v. McCann?

A Yes, I did.

Q Did you rely on that case in making your determination?

A No, I didn't.

THE COURT: Have they allowed that in the past up there? Have you been permitted to accompany prisoners before a superintendent's proceeding?

THE WITNESS: No, sir, not at Bedford.

THE COURT: Elsewhere that you have served?

THE WITNESS: In the old House of Detention, prior to any Supreme Court rulings on the matter.

THE COURT: Anything else?

MR. LATIMER: I have nothing further.

MR. KANTOR: Nothing further.

THE COURT: You are excused.

(Witness excused)

MR. LATIMER: My next witness is Tanya Jackson.

MR. KANTOR: Your Honor, wouldyou give us a two-minute recess while the witness is being brought up?

THE COURT: She is here.

T A N Y A J A C K S O N , called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LATIMER:

Q Miss Jackson, you are presently an inmate in the Bedford Hills Correction Facility, is that correct?

A Yes.

Q Will you tell the Court what you were convicted of and the term of your sentence?

A I am convicted of possession of a dangerous weapon, four years.

Q Can you speak up a little bit?

A I am sentenced to Bedford Hills for four years for possession of a dangerous weapon.

Q How much time have you done already?

A June 28 will be ten months.

Q Have you been written up on any disciplinary infraction?

A Yes, I have.

Q On May 23 were you in segregation?

A Yes.

Q Did you observe Carol in the segregation area on that day?

A Yes, I was in the segregation with her.

MR. KANTOR: Your Honor, excuse me. Could you direct the witness to speak up? I can't hear her at all.

THE COURT: Please speak louder.

THE WITNESS: Yes, I was in segregation with Carol Crooks.

Q Where in the segregation area was Carol on the 23rd?

A We was on the part where we would be locked at.

Q Was she in her room or in the corridor or in the day room on the 23rd, if you remember?

A No, at that time they stated she is supposed to have been a resident.

Q Who stated?

MR. KANTOR: I object,your Honor.

THE COURT: I will strike out the answer. Miss Jackson, I am going to ask you to speak so those people in the back row can hear you. You speak out real loud.

Q Was she locked in on the 23rd, to your knowledge?

A No, she was not.

THE COURT: Mr. Latimer, isn't this cumulative? As I gather, there is no issue over whether she was in the day room or not on that day. Is there? Is that in issue in this case?

MR.KANTOR: No t in issue.

THE COURT: I don't think we have to keep proving it by a great number of witnesses, if we have had several already who have told us that on the 23rd she was partly in the day room and partly up and down the corridor talking to other people. Isn't that so?

MR. LATIMER: That's so, your Honor.

THE COURT: Is that your understanding of the facts?

MR. LATIMER: That's my understanding of the facts.

THE COURT: That's not controverted, is it?

MR. KANTOR: Not controverted.

MR. LATIMER: The same on the 24th?

MR. KANTOR: The same on the 24th. She was not locked in her room on the 24th.

Q In the evening ofthe 24th, because I believe

that this might very well be in issue, the circumstances of that evening --

THE COURT: Yes, I will take proof on the evening of the 24th.

Q On the evening of the 24th, did you hear or see Carol talking to any of the correction officers or any of the officials of the prison?

A Yes, I didn't.

Q Did you see any unusual activity in the segregation area on the evening of the 24th?

MR. KANTOR: Objection.

THE COURT: Overruled.

A What did you say?

Q Did you see anything unusual in the segregation area on the evening of the 24th?

A Yes.

Q Can you tell the Court what you saw?

A Well, it was kind of a little strange out in the corridor because, see, we was locked inand we supposed to have recreation, but at the time Carol Crooks was out and stated that we couldn't come out for recreation --

Q Who stated that?

A The officer stated that we couldn't come out

for recreation until Carol Crooks goes into her room, and she was in the day room, so we couldn't see, you know, down that far.

Q Did there come a time that Carol went back to her room, if you remember?

A She didn't go to her room. She asked to see someone about why she had to be locked in her room.

Q Whom did she ask?

A All I know is that she asked the officer to call the sergeant.

Q What happened after she asked?

A Well, the officer that was on duty that night said she would call the sarge, so it happened that the sarge didn't get there until real late, and that was something after 6, so --

Q Where was Carol during that time?

A At that time she had came down the corridor talking to me and one of the inmates.

Q Did you see any large number of correction officers at that time?

A I did.

Q Can you tell us where you saw them and what they were doing?

A Well, my window can face the school, and plus

you can see up on the hill, and there was coming in all directions.

Q Do you know how many were coming?

A As we was counting them, altogether we say 17. I might be wrong, but it was a number of them.

Q Do you know where they went when they were coming from on the campus?

A To segregation.

Q Did you see them come in to the segregation area itself?

A Yes, we did.

Q Where did they go --

A When they came in through the door, like I say, I can't see down the corridor in the rec, but they came inside. As they came in, I don't know what was said inthere, but I know that Carol Crooks came down the corridor and went directly to her room.

Q Did all of the correction officers that you saw come into the segregation building at that time?

A All of them. Every one of them walked in the door.

THE COURT: What if anything did you see them do?

THE WITNESS: They didn't do anything.

They couldn't do nothing. All they did was walk through the door and Carol Crooks went to her room.

MR. KANTOR: I object at this point, your Honor, to her statement, one, they didn't do anything, and, two, they couldn't do anything.

THE COURT: Whether they couldn't or --

MR. KANTOR: She already testified that she didn't know whether they did.

THE COURT: I asked her whether --

THE WITNESS: She couldn't have did anything because as they came in, even though the men officers come on, if an inmate puts up an argument, therefore, it is something they would be cited.

Q Do you know of your own knowledge why they were there at that time?

A Well, all I know, she had asked to see the sergeant about why she had to be locked in, but I don't know --

Q "She" being Carol?

A Carol Crooks, but I don't know the reason why there has to be the amount of officers to come.

Q But these officers came down right after she made that request, right?

A After I believe the officer called the

sergeant and she took her time coming, and she brought the rest of the officers with her.

MR. LATIMER: I have nothing further, your Honor.

CROSS-EXAMINATION

BY MR. KANTOR:

Q You testified that your window faces the school from the seg unit, is that correct?

A Yes.

Q Is that the front or the back of the building?

A That's the front.

Q The front of the building? You saw some corrections officers coming down from the campus, is that correct?

A Correct.

Q Were they only female correction officers or were there male corrections officers as well?

A They was womens.

Q Only women?

A Womens.

Q Then you saw them all go into the room, into the building, is that correct?

A Yes.

Q But you didn't see what happened once they

went inside the building, is that correct?

A No.

Q How long after they went into the building did Carol come back into her cell?

A Well, it wasn't too long because I say about --

Q Five minutes? Ten minutes? A half hour?

A About five minutes.

Q She just went and walked right down the corridor and into her room?

A Yes.

Q She had to walk past your room in order to get there?

A Yes.

Q Prior to that had you heard any unusual noises?

A No, there was no noise.

Q Any fights, any arguments?

A No.

Q Approximately what time in the evening was it that this occurred?

A Well, it supposed to be our rec time because we usually have rec right after they finish washing dishes, so I believe around a quarter to 6, somewhere

around there.

Q It was about a quarter to 6?

A Yes.

Q That all this occurred, is that right?

A Between there, somewhere around there.

Q Carol had been out all day, is that correct?

A She had been out all day.

Q Were any other inmates out all day?

A No, because we were locked.

Q Had you been in seg before that?

A Yes.

Q At any time that you had been in seg, had you ever been allowed out all day?

A Only time I come out is for taking a shower and rec time.

Q Ddd you ever volunteer to do details in the corridor?

A Sometimes.

Q You were let our for that?

A Yes, sometimes.

Q Carol wasn't doing details on that day, was she?

MR. LATIMER: Objection.

A No, she was not.

THE COURT: Overruled.

Q You testified that you heard Carol ask to see the officer?

A Sergeant.

Q To see the sergeant, I see.

Where was Carol when she asked this? Was she in the corridor?

A No, she was in the rec.

Q In the rec? That's off the corridor, is that right?

A Yes.

MR. KANTOR: I'd like this marked for identification.

(Defendant's Exhibit A was marked for identification)

Q I show you now Defendant's Exhibit A marked for identification and ask you if that is a fair and accurate representation of the segregation unit at Bedford Hills Correctional Facility?

A It's correct.

MR. KANTOR: I show it to counsel.

(Pause)

MR. KANTOR: Excuse me, your Honor. I just noticed the defendant is marking up the exhibit.

THE COURT: There is no basis for doing that.

MR. LATIMER: There is no mark on the exhibit that was not placed there by counsel.

THE COURT: There is no basis to markthe exhibit. You can't do that.

MR. LATIMER: We were not marking the exhibit, your Honor.

THE COURT: I thought I saw a pen move on it also. Show it to whoever drew it and find out if it has been changed. Let's go on to something else.

Q From your room can you see into the day room or the rec room, as you call it?

A No, I didn't.

Q But you can hear what's going on in the rec room, is that correct?

A If it's loud enough I can.

Q If it's just people talking in conversational tones, can you hear it?

A Unless the door is closed, I can't.

Q Once more?

A If the door is closed, I can't hear anything.

Q At time, that's about 5:45 on May 24, 1974, was

the door between the rec room and the corridor open or closed?

A At that time the door was closed.

Q So you couldn't hear anything at all, is that right?

A Unless I was near the door, I could, but I was not at the door.

THE COURT: Let's not mark on it or give the appearance of marking on it.

MR. LATIMER: It is not being marked on at all, your Honor. I will state that for the record.

THE COURT: Mr. Kantor, you don't need this witness to get that sketch in evidence. Let's go forward.

Q After Carol returned to her room, were you ultimately led out into recreation?

A Yes, we was.

Q You spent your full hour out there?

A No, we didn't get no full hour.

Q How long were you out there?

A Some was out for a half an hour, some was out for 15 minutes, because at the time they was bringing in new girls, so we had to be relocked again.

Q During that period after Carol went back

into her room, did you hear any noise coming from her room?

A No, there was not.

Q Did you have an opportunity to look into her room?

A Yes, I stopped at her door.

Q Did you look into her room?

A Yes.

Q You were able to look into her room? There was nothing blocking her room?

A No, there was nothing blocking her room.

MR. KANTOR: I have no further questions.

THE COURT: Anything else of this witness?

MR. LATIMER: Just one or two questions.

REDIRECT EXAMINATION

BY MR. LATIMER:

Q You told us that you couldn't hear the conversation coming from the day room when the door was closed, is that right?

A Yes.

Q When you heard Carol ask for the sergeant, if you remember, where was Carol at that time?

A At that time when Carol called for the sergeant, she was almost close to the door because they

didn't have the door locked, because she was still on -- she was still out at that time.

Q Was she -- she was by the day room?

A Between the desk and the door.

Q Could you see the door to the day room at that point?

A From my door you can see, yes, from my room you can see the door.

Q So the door was open at that time?

A Yes, it was --

Q You heard Carol in conversation --

A All she said was she wanted to see the sarge.

Q You testified you came back, during your exercise period you looked in Carol's room?

A Yes.

Q What was Carol doing when you looked in her room?

A Reading her Koran.

MR. LATIMER: That is all.

MR. KANTOR: That is all.

THE COURT: You may step down.

(Witness excused)

THE COURT: The Court will take a ten-minute recess.

(Recess)

M Y L E T A J O Y N E R , called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LATIMER:

Q Miss Joyner, you are presently an inmate at the Bedford Hills facility, is that right?

A Yes.

Q Can you tell the Court what you were convicted of and what your sentence is?

A Of petty larceny and assault.

Q How long -- how much time are you doing up there?

A I was served 1 to 4.

Q When are you due to be released from the institution?

A July 19.

Q Do you know Carol Crooks?

A Yes.

Q Have you known her for -- during your time in Bedford Hills?

A Yes.

Q Has she ever acted in a threatening manner toward you?

A No.

Q Have you ever seen her act in a threatening manner toward any other inmates?

A No, I haven't.

Q Can you speak up a little bit? I want the people in the back to hear you.

A No, I haven't.

Q On or about May 25, 1974 were you housed in the segregation unit?

A No.

Q On or about that day, did you have a conversation with Captain Woolley concerning Carol Crooks?

A Yes.

Q Can you please tell the Court what you said to Captain Woolley and what Captain Woolley said to you?

A I came down to Captain Woolley and I told her I was upset, and she said, "What is it you want done?"

I said, "I would like to make a phone call to my father."

So she said "Myleta, that's notwhy you down here."

I said "What is you, a mind reader or something?

She said, "No, but I just have the feeling that you are down here because of Carol."

I said, "Since you bring up the subject," I said, "well, why is she still held in segregation?"

And she told me, well, it was -- it was -- well, she told me to "Go and look in Chapter 5 and 6 in the law books and see that we can hold a person in segregation indefinitely if we wanted to."

So I have told her, I said, "I don't know nothing about the law, so you have to break it down to me."

When she broke it down to me, I still didn't know what she was coming from.

Q What did she say when she broke it down to you, if you can remember?

A She was just telling me to go up in the library and look in the law books and look in Chapter 5 and 6.

Q Did she say anything about whose authority Carol was being kept in segregation under at that time?

A No. I asked her, I said "Well, did the order come from Miss Warne?"

She said "Myleta, I can't tell you that,"

and, you know, so I said "Yeah, okay."

Q Have you ever been in segregation in Bedford?

A Yes.

Q Can you tell us what conditions were like in segregation when you were there?

MR. KANTOR: Objection. Relevance.

THE COURT: Sustained.

MR. LATIMER: I have nothing furtherof this witness.

THE COURT: Any cross-examination?

MR.KANTOR: Yes, your Honor.

CROSS-EXAMINATION

BY MR. KANTOR:

Q Miss Joyner, is it Ms. Joyner?

A Yes.

Q Ms. Joyner, at Bedford Hills, what block or room or facility do you reside?

A 112A and B.

Q How long have you known Carol Crooks?

A For about six months.

Q In other words, you first met her in January? Is that correct? Of this year?

A December

Q December.

THE COURT: Please don't repeat the answers. That only encumbers the record.

MR. KANTOR: I apologize, your Honor.

Q Prior to December you had never known Carol Crooks?

A I had seen her.

Q But you had never spoken to her?

A Yes, you know, a couple of times.

Q Would you say that you were friends with Carol Crooks?

A Yes.

Q You say youwere close friends?

A Associates.

Q You worked normally in the same place?

A No.

Q Spend your free time together?

A No.

Q Between December when you first became associated with Carol Crooks and February 3 of 1974, about how much time did you spend with Carol Crooks?

MR. LATIMER: Objection, your Honor. I don't see the relevancy of this at all.

THE COURT: I suppose he could show

friendship to the plaintiff, that is permissible cross-examination. What are you associated with the plaintiff in?

THE WITNESS: Friends.

THE COURT: All right.

Q You testified, did you not, that you never saw Carol act in a threatening manner toward you or any other inmate, is that correct?

A Yes.

Q Between the time you first became associated with Carol Crooks and the time she was removed from the general population on February 3, how much time did you spend with Carol Crooks?

A None.

MR. LATIMER: Objection, your Honor.

THE COURT: Overruled. He means how much time in days or weeks or hours you were in her company, that the two of you were together.

THE WITNESS: None.

Q So actually you had no opportunity to observe what Carol Crooks did with regard to other inmates between the time you became really aware of her presence and the time she was removed from the general population, is that correct?

A Yes.

THE COURT: What is the uniform that you are wearing?

THE WITNESS: A Muslim gown.

THE COURT: Does it stand for any particular position or rank or anything like that?

THE WITNESS: That I am a Muslim. A Suni-Muslim.

Q You testified that you had a conversation with Captain Woolley concerning Carol Crooks, is that correct?

A Yes.

Q When did you have that conversation?

A I think it was the 25th. I'm not sure.

Q 25th of when?

A May.

Q You testified that you said something to the effect why wasn't Carol Crooks released yet, is that correct?

A Yes.

Q And Captain Woolley referred you to something called articles 5 and 6?

A Yes.

Q Do you know what articles 5 and 6 are?

A No.

Q Have you ever heard of it before?

A No.

Q Have you ever been before an adjustment committee before?

A Yes.

Q Do you know what authority -- where the adjustment committee gets its authority to interpose discipline?

A No.

Q Did you subsequently go and read articles 5 and 6?

A No.

THE COURT: He means chapters 5 and 6. Did you go read them?

THE WITNESS: No.

Q You also testified that Captain Woolley said that they could keep her in seg -- they could keep somebody in seg indefinitely?

A Yes.

Q Did she say to you that Carol Crooks was going to be kept in seg indefinitely?

A No.

Q Did she intimate to you anything at all about

what the disposition was going to be with regard to Carol Crooks?

A No. She told me she couldn't tell me nothing else.

Q You said something about Superintendent Warne. Some kind of order coming down from Superintendent Warne. Is that what you said?

MR. LATIMER: If the Court pleases, the reporter can read back --

THE COURT: No, the reporter doesn't have to read it back. It is reasonable cross-examination.

What did you say with respect to Superintendent Warne?

THE WITNESS: What did I say what?

THE COURT: What did you and Captain Woolley say about Superintendent Warne, either of you? What did you say to him or he to you?

THE WITNESS: I asked did the orders come from Miss Warne. She said "I couldn't tell you that, Myleta."

Q What orders were you referring to?

A The orders to keep her in segregation over her time.

Q Did she say that there were orders to keep her

in seg over her time?

A She said they had a meeting, and I asked with whom, so she wouldn't come out and say, so I just started mentioning names.

Q What did she say with respect to Superintendent Warne?

A She said she couldn't tell me nothing else.

Q She didn't tell you that Superintendent Warne gave the direction, did she?

A Say that again.

Q Did she say that Superintendent Warne gave her directions to keep Miss Crooks in seg?

A That's the way it seemed to me.

Q Did she say it?

A No, she didn't say that.

MR. KANTOR: I have no further questions.

THE COURT: Anything else?

REDIRECT EXAMINATION

BY MR. LATIMER:

Q Miss Joyner, I have just got one or two questions. You knew Carol before February 5, right?

A Yes.

Q Would you describe your relationship as that of a close friend or more of a casual acquaintance?

A Friends.

Q Any time after February 5 were you in segregation at all?

A Yes.

Q Did you speak with Carol in segregation after that?

A She wasn't there.

Q Did there ever come a time when you and Carol were in segregation together, were housed together?

A Yes.

Q Was that before or after February 5, if you can remember?

A Before.

Q So that you did in fact know Carol in that period between December and February?

A Yes.

Q Had you ever heard any inmates discuss their fear of Carol?

MR. KANTOR: Objection.

THE COURT: Overruled.

Q Did you ever hear any inmates discuss any fear of violence from Carol or injury from Carol?

A No.

Q Coming back to the conversation with Captain Woolley, when Captain Woolley stated that they could keep somebody in segregation indefinitely, that conversation that you had with Captain Woolley was specifically about Carol, wasn't it?

A Yes.

Q And Captain Woolley knew that it was specifically about Carol, didn't she?

A Right.

MR. LATIMER: I have no further questions.

RECROSS EXAMINATION

BY MR. KANTOR:

Q You know Diane Long?

A Yes.

Q Did Diane Long ever express a fear of Carol?

A No.

Q No?

Are you a member of the inmate liaison committee?

A No.

Q Do you know anybody who is a member of the inmate liaison committee?

MR. LATIMER: Objection, your Honor.

Relevance.

THE COURT: Overruled.

A No.

MR. KANTOR: No further questions.

MR. LATIMER: Nothing further.

THE COURT: You may step down.

(Witness excused)

C I N D Y R E E D, called as a witness by the plaintiff, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LATIMER:

Q Cindy, are you presently an inmate in the Bedford Hills facility?

A Yes.

Q Can you tell the Court what you were convicted of and what your sentence was?

A Robbery, zero-max.

Q How long have you been in Bedford?

A 22 months.

Q Do you go to the parole board? When do you go to the parole board, if you know?

A In February.

Q Have you ever been the subject of any disciplinary infraction?

A Yes.

Q Have you ever been in segregation?

A Yes.

Q Were you in segregation on or about May 30?

A Yes.

Q At or around that time, did you see Carol -- you know Carol, don't you?

A Yes.

Q Are you friendly with Carol?

A Yes.

Q Have you ever been afraid of Carol physically?

A No.

Q Do you know anybody who has been afraid of Carol among the inmates?

A No.

Q Coming back to May 30 for the moment, did you have occasion to see Carol in conversation with any correction officers at that time?

THE COURT: This is May 30?

MR. LATIMER: Around May 30, that's correct, your Honor.

A Correction officers?

Q Or any prison officials or authorities.

A Mrs. Waterman -- Miss Waterman, Lt. Waterman.

MR. KANTOR: Your Honor, again --

THE COURT: You will have to speak louder, for me, please. Very loud.

MR. LATIMER: The answer, incidentally, was that she saw Carol talking to Lt. Waterman.

Q Were you able to hear that conversation?

A No.

Q Did you have a conversation with Carol after that time, after she spoke with Lt. Waterman?

A Yes.

Q Can you tell us what that conversation was?

MR. KANTOR: Objection, hearsay.

THE COURT: Sustained.

Q Can you tell us what did you see Carol do after she spoke with Lt. Waterman?

A Just walk away.

Q Do you know of your own knowledge whether Carol saw the adjustment committee on that day?

A I don't know of my own knowledge,no.

MR. KANTOR: Again, your Honor.

THE COURT: She said no.

Please do me a favor, speak nice and loud.

Real loud.

THE WITNESS: I will try.

THE COURT: Is that a uniform of some sort that you are wearing?

THE WITNESS: Yes.

THE COURT: What does that represent?

THE WITNESS: It is for my religion.

THE COURT: What religion is that?

THE WITNESS: Muslim.

THE COURT: That's the same habit as the plaintiff but it is a different color, is it?

THE WITNESS: Yes.

THE COURT: What is the difference? Why is hers different from yours?

THE WITNESS: This is how administration gave them out, different colors.

THE COURT: You don't have a hat?

THE WITNESS: No.

Q Is there a religious significance to the different colors?

A No.

THE COURT: Is there any significance to the fact that you don't have a hat?

THE WITNESS: No. They didn't give me one.

THE COURT: You mean the government didn't?

THE WITNESS: They didn't have enough, no.

Q Is it a tenet of your religion that you must keep your head covered?

A Yes.

Q Do you know of your own knowledge whether Lieutenant Waterman was sitting on the Adjustment Committee on or around May 30th?

A No, I don't know.

MR. LATIMER: I have nothing further.

CROSS EXAMINATION

BY MR. KANTOR:

Q How long have you known Carol?

A Approximately 17 months.

Q I refer you now to the period on or about January 3rd of this year. Did there come an occasion when you had a conversation with one or more of the correction officers concerning the status of your physical well being?

A January 3rd.

Q On or about that date.

A No.

Q Do you recall having black eyes on or about that date?

A Not on January 3rd.

Q When, then, did you have the black eyes?

A In February.

Q It was in February?

A Yes.

Q When in February?

A The 4th or 5th.

Q Would it perhaps have been February 3rd?

A Around the 3rd, 4th or 5th.

Q You were sent to the nurse on that day?

A Yes.

Q Were you wearing dark glasses on that day?

A Yes.

Q Are you normally permitted to where dark glasses?

A Yes.

Q You are?

A Yes.

Q Did the nurse treat you?

A No.

Q Did she give you anything for it?

A No.

MR. LATIMER: Your Honor, I really don't understand the relevance of this particular line of connection.

THE COURT: I will take it subject to connection. Let us get right to the point.

Q Who was the member of the staff who sent you to the nurse?

A Lieutenant Woolley. Captain Woolley.

Q Captain Woolley. Where were you coming from?

A From work.

Q Where were you working?

A In the cafeteria.

Q How did you come to get those black eyes?

A I had one black eye.

Q How did you come to get that black eye?

A Fooling around in the cafe.

Q With whom?

A Shirley, a friend of mine.

Q And Carol Crooks?

A No.

Q Wasn't Carol Crooks indeed there?

A I don't know if she was there.

Q You say you have known Carol Crooks for 17 months. You were a friend of hers?

A Yes.

Q Close friend?

A We were Mus'im sisters.

Q What is the significance of that?

A Well, we are naturally close, being that we are both Muslims.

Q You are close, right?

A Yes.

Q You spend a lot of time with each other?

A Yes.

Q Prior to the time that Carol was placed in segregation, approximately how many hours a day did you spend with Carol?

A I couldn't say that. Shey varied.

Q Would you say more than two, less than two, on the average?

A I couldn't say.

Q You couldn't say? You testified that you don't know of anyone who has been afraid of Carol, is that correct?

A Yes.

Q Do you know Diane Long?

A Yes.

Q Is she afraid of Carol, to your knowledge?

A Not to my knowledge, no.

Q Have you asked any inmates what their opinion of Carol was?

A No, because I am not involved with that many inmates besides my sisters, my Muslim sisters.

Q How many Muslim sisters do you have?

A Approximately 30.

Q Approximately 30. You have talked to those 30, haven't you, on frequent occasions?

A No, not quite.

Q Have you ever asked them whether or not they are afraid of Carol?

A No.

Q You have never asked them? You testified that on May 30th you saw Carol talking to Lieutenant Waterman, is that correct?

A Yes.

Q Did you overhear any part of that conversation?

A No.

Q Where were you when you heard that conversation?

A In the kitchen.

MR. LATIMER: Objection, your Honor. She testified she didn't hear the conversation.

THE COURT: That is true. She said she didn't hear the conversation.

MR. KANTOR: I will rephrase the question.

Q Where were you when you saw Carol talking with

Lieutnenat Waterman?

A In the kitchen.

Q The kitchen of where?

A Segregation.

Q What were you doing in segregation?

A That time --

THE COURT: Were you segregated, is what he is asking you?

THE WITNESS: Yes.

MR. KANTOR: I have no further questions.

THE COURT: Anything else?

REDIRECT EXAMINATION

BY MR. LATIMER:

Q On May 30th at around the time that you saw Carol talking to Lieutenant Waterman, were you supposed to see the Adjustment Committee on that day?

MR. KANTOR: Objection.

THE COURT: Overruled.

A I think that I did see the Adjustment Committee.

Q Was Lieutenant waterman on the Adjustment Committee, if you can remember?

A No.

Q During the time that you have been in Bedford Hills and particularly the time that you were with the

general population, you have talked about other inmates with people that you are in conversation with, haven't you?

A Yes.

Q On occasion you have talked about Carol to other people, haven't you?

A Yes.

Q And when you have talked about Carol to other people, none of them has expressed any fear of Carol?

A No.

MR. LATIMER: I have nothing further.

THE COURT: Anything more for this witness?

MR. CANTOR: Nothing further, your Honor.

THE COURT: You may step down.

(Witness excused.)

MR. LATIMER: Your Honor, my next witness is the plaintiff and I think it probably will be a lengthy examination, and I would request that we break for lunch and start again.

THE COURT: I don't think so. Let us continue with the trial. I will break for lunch at my regularly scheduled time and I will interrupt your examination at that time.

7/1/74 T2

lhh 1 Crooks-direct

C A R O L C R O O K S, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LATIMER:

Q Carol, will you, as everybody else did, tell the court what you were convicted of and what sentence you are serving?

A On this charge here, Bedford Hills facility, I am serving zero to 15 for manslaughter 1, attempted homicide, assault 2, fourth degree dangerous drugs, to sell. And the other charge for being down in the -- that is it.

Q You are serving a sentence concurrent with the zero to 15 on that charge?

A Yes.

THE COURT: I am going to ask you the same thing. Please speak up.

Q Were you involved in an incident on or about February 3rd?

A Yes, I was.

Q Did that incident result in a superintendent's proceeding?

A A little over 33 days later.

Q What was the date of the prlceeding?

A Superintendent Seagram. The superintendent's

proceeding was on March 8th. I was informed of it on March 5th.

Q Did you make a request to have a counsel substitute?

A Yes, I did.

Q Whom did you request?

A I requested Jackie Sanson.

Q That is Joyce Sanson who testified this morning?

A Yes.

Q Was that request approved or denied?

A It was denied.

Q On March 8th was there in fact a superintendent's proceeding?

A Yes, there was.

Q What was the result of the superintendent's proceeding?

A The superintendent's proceeding, it was a one-sided decision, number 1 --

MR. KANTOR: Objection.

THE COURT: Yes, I will strike that out. He is just asking you what the result of the decision was.

THE WITNESS: The result was 60 days' segregation time, no good time, six months' loss of good time and also referred to the adjustment committee.

Q When did you see the adjustment committee?

A I saw the adjustment committee on March 15th.

Q Where were you on March 15th?

A I was housed in segregation.

Q How much advance notice did you have that you were going to see the committee on that date?

A I did not have any.

Q There came a time before you walked into the adjustment committee room that you knew you were going into the room. How far in advance was that?

A To tell you the truth, I was walking from the shower and she told me she is going to see me today.

Q Who is she?

A Miss Wilson. Lieutenant Wilson.

Q You went into the adjustment committee room, is that right?

A Yes, I did.

Q What happened when you went into the room?

A When I went into the room there was Lieutenant Wilson, Miss Clement's secretary, Mrs. Donovan, and also another CO. I can identify her but I have forgotten her name.

Q What did she say to you when you walked into the room?

A Miss Wilson asked me how was I doing. I said fine. I sat down. When I entered the room, Miss Wilson asked me how

was I doing, and I told her fine, and I sit down. And she read the charge sheet off to me and she told me -- before she read the charge sheet off she said "You know that you are here pending the superintendent's proceeding, that you were referred to the adjustment committee." I said "Yes." So then she says "Do you know the charges?" I said "No." She read them off to me.

Q This superintendent's proceeding, that to your understanding was the one that was held the week earlier, right?

A Yes.

Q What did she read off the charge sheet?

A She read off that I had disassembled my bed and also that I had asked to go over to observation and I had broke out the windows and the door of segregation.

Q Did you have any advance notice at all that these things were going to be considered at this adjustment committee?

A I was only made aware that I was to see them but never when.

Q Nobody told you why, is that right?

A When I --

MR. KANTOR: I object to the leading.

Q Were you told the reason that you were going to the adjustment committee on the 15th?

A I asked Miss Clement, I asked her why would I have to see the adjustment committee, why couldn't I continue seeing her, and she said, well, I would have to be referred back to them because of the broke window and other things, and that is all she --

THE COURT: What did you get the 60 days for?

THE WITNESS: I got 60 days for allegedly assaulting four officers.

THE COURT: All right. What was the disposition of the broken window case?

THE WITNESS: They gave me a week running with the 60 days and I was not to see the adjustment clinic any more. I was to leave on May 23rd as the superintendent proceeding said I was to leave.

THE COURT: They gave you a week concurrent?

THE WITNESS: Yes.

Q Did there come a time when you were transferred down to the women's jail at Valhalla?

A Yes, I was.

Q Do you remember what day that was?

A That was on March -- April 21st.

Q April or March?

A March, excuse me.

Q There came time when you returned to Bedford Hills,

is that right?

A That was on May 9th.

Q While you were at Valhalla, can you describe the conditions of your confinement?

MR. KANTOR: Objection. Irrelevant.

THE COURT: I don't understand that it is relevant under the theory of the pleadings, Mr. Latimer. If you can explain to me how it is relevant, I will take it.

MR. LATIMER: It constitutes double punishment, your Honor.

THE COURT: I understood you didn't claim in your petition that she was continued in punitive segregation while in Valhalla.

MR. LATIMER: I think it is in the complaint, that she was continued in segregation while at Valhalla.

THE COURT: I didn't so read it. Also, it doesn't appear whether that decision was pursuant to the direction of these defendants or whether the Commissioner of Corrections of the county of Westchester put her there because he had nobody else in the women's wing.

MR. LATIMER: We make the allegation in paragraph 5 of the complaint that on or about March 20th Carol Crooks was transferred to the Westchester County Jail at Grasslands, Valhalla, where she was confined in segregation, with this

segregated confinement being excluded from the 60 days' sentence being ordered at Bedford Hills.

THE COURT: It doesn't say punitive.

MR. LATIMER: It says segregation.

THE COURT: You can have segregation that isn't punitive. All right, I will take the evidence. I will have to sort it out later.

Q What were the conditions of your confinement at Valhalla?

A The first five days that I entered Valhalla I was locked for 24 hours. I was only allowed to come out for a shower. After five days I was put in a restricted area where there were six rooms and a rec and I was totally locked and segregated from the rest of the population.

Q Was there anybody else confined in this area that you were?

A There was other -- like other cubicles, like people were, but there was two and three of them in each area, and like the other areas, there was 10, 12 or 15.

THE COURT: You were in the jail, not the penitentiary? Isn't that so?

THE WITNESS: The county jail.

THE COURT: You were waiting to be a witness?

THE WITNESS: Well, your Honor, see, over in

Westchester County, the only county jail is there for everybody, women. There is only one section. The other part is for the males. So they got detention cells.

Q Were you able to communicate with the other prisoners during the time that you were down there?

A Not until after a month.

Q On May 9, 1974, you returned to Bedford, is that right?

A Yes.

Q What was your status when you returned to Bedford?

A When I returned to Bedford, I was drove in shackles, the whole time I was down there, I was always shackled.

MR. KANTOR: Your Honor, the witness is mumbling.

THE COURT: I have asked her to speak up.

Q Speak up so everybody can hear you.

A Coming from Westchester County up to Bedford Hills correctional facility, I was always in shackles during the whole time whenever I was out of the building. When I came up to Bedford Hills correction facility, I had shackles on my ankles and also around my waist with a padlock. I was escorted by a male and also a female. I remained in those shackles for about 20 or 15 minutes, within that limit, until another officer came, and they had signed some -- a lot of papers, and I had to go and sign my papers too, and then

the correctional officers from our facility had to stand in front of me. Then they released the shackles off of me and they was ready to leave after the officers had came there. I would remain sitting out in the area for about, after the escort that brought me, for about 15 minutes. While I was sitting out there, I saw Miss Hinckley, because I asked the lady -- the officer, the CO, why was she standing in front of me. She said "I don't know, I have orders." She said "You would have to ask Miss Hinckley or Miss Woolley." So I didn't see Miss Woolley or nobody, but she turned and pointed -- Miss Hinckley used to sit on the adjustment clinic. I said, "Miss Hinckley, why do I have to be escorted -- this officer stand in front of me?" She told me "You would have to go back to segregation." I said "What for?" She said "To finish the remainder of your time." I told her I had been in segregation down there and I had been in a restricted area which acts as a segregation down there. So she said, "Well, that doesn't have anything to do with us." I told her that I had spoken to the warden and the warden had told me that Bedford Hills facility said that they wanted me to be restricted. It came under the head of --

MR. KANTOR: Objection, your Honor, to so much of that --

THE COURT: Yes. I am taking it solely as evidence

that this is what the witness told the person to whom she describes herself as being engaged in conversation and not for the truth of the statement.

MR. KANTOR: Thank you.

Q Carol, let me ask you if you at any time submitted a request to find out when you were to be released from segregation?

A Yes, I did.

Q I will show you this document. It is a two-page document --

THE COURT: Mark it for identification.

xx (Plaintiff's Exhibit 3 marked for identification.)

Q I ask you if this is the request you submitted and the response that you received?

A Yes.

MR. LATIMER: I show it to counsel and then offer it.

MR.KANTOR: I have no objection, your Honor.

THE COURT: It will be received in evidence.

x (Plaintiff's Exhibit 3 received in evidence.)

Q On the basis of Plaintiff's Exhibit 3 which you just saw, when were you to be released from segregation?

A I was to be released on May 23rd.

Q On May 23rd can you tell us what happened from the time you got up in the morning?

A On May 23rd Miss Terry, CO Terry, which is in charge of segregation, she came and opened my door at 9 o'clock because I looked at the clock when I went out to the front. She told me to take my shower and clean my room, that she had gotten no word about where I was going to live at but to clean my room and get my shower. I started getting my shower, I went over into the other corridor and I was talking for a long period of time up until 10:30. She told me to hurry up and go get my shower because I might have a visit, because my mother had called to speak to Lieutenant Waterman and said she would be up there that day.

Q You weren't locked in your room at that time, were you?

A No, I was not. At 12:35 precisely, I saw Miss Woolley, Captain Woolley enter the door of segregation. I had been waiting all this here time to wait to hear from what Miss Woolley had to say because Miss Terry informed me that she was waiting to get a call from Miss Woolley. I had no knowledge that she was coming over. But Miss Woolley came over and I said hello, I was sitting in the rec, my clothes was packed up at the door.

Q Excuse me for a minute, Carol. The rec is what has been referred to before as a day room, is that right?

A Yes. It is where you come out for your hour's rec.

Q Just so that everybody knoss.

A I was sitting out at the rec. Miss Woolley went into the adjustment clinic. She came back out and she asked Miss Terry where was Miss Cradle. Miss Cradle was down the other corridor towards work release, that's where the shower is. During the period before --

Q You heard that conversation, right?

A Yes, because she was talking to her, and, you know, the desk is right there. She like yelled across to her. She wasn't up on top. Miss Woolley asked where Sergeant Cradle was and Miss Terry told her that she was down the other corridor towards work release. She proceeded down that side of the corridor where we go to take showers at. A new officer was sitting behind the desk asked me to tell her about Islam. We got engaged in a conversation about Islam and she was asking about fasts and we was laughing and joking. During the process of that, Captain Woolley came through the door first. Then Mr. Smith came through the door. Then Lieutenant Cradle came through the door. The door wasn't locked before that but when they came through the door, they was like squeezing through the door, and I thought something was funny, but the officer say --

MR. KANTOR: Objection to what she thought, your Honor.

THE COURT:Yes. Strike out what she thought.

A (Continuing) The officer, you know, was still laughing about the month of Ramadan fasting, and they all proceeded to go into adjustment clinic. Sergeant Cradle came back out together with some papers, she had some papers in her hand, and she told me "Carol, we are ready for you." She said "Would you come in?"

Q Did you know beforehand that you were going to see the adjustment committee?

A No, I had no idea.

THE COURT: We will stop here. Recess until 2 o'clock.

(In the robing room.)

MR. LATIMER: Miss Smith had asked the marshal if she could bring some items of food to Carol and one or two of the other inmates consisting of I think bread and cheese, but I am not exactly certain. The marshal suggested that we check with the court.

THE COURT: I am going to have to leave that problem with the marshal. The marshal has sole power over the security around here and the marshal I am sure will see that they are fed and fed in accordance with their religious beliefs. If the marshal sees fit to permit these items to be brought in, he may. But I am not going to direct him. That's his responsibility. He is the one who stands behind

any difficulty which might arise. So please don't ask me to intervene with the marshals.

MR. LATIMER: So we can go back and tell the marshals --

THE COURT: You tell the marshals, I will let the clerk go back with you, you tell the marshal that it is a matter for his judgment and discretion. Whatever he thinks appropriate he is to do.

(Luncheon recess.)

AFTERNOON SESSION

2:10 P.M.

THE COURT: It is now about ten after 2 and the plaintiff doesn't seem to have been brought upstairs yet. Is there anything else we can do in the meantime?

MR. LATIMER: I have the plaintiff and one other witness.

THE COURT: Is your other witness here?

MR. LATIMER: She is downstairs with the other prisoners. All my witnesses are inmates.

THE COURT: Please stand by, then. I will resume as soon as the witnesses are available.

(Pause)

MR. LATIMER: Your Honor, I have one request. There is one woman who testified this morning whom we may wish to call as a rebuttal witness, depending on some of the evidence that the state brings up, and that is Joyce Sanson, and I would ask that she at least be kept on Rikers Island until the state presents its case and I see whether or not I actually do need her.

THE COURT: I understood that you had consented to satisfaction of all of the writs which the clerk handed up to me. He had gone over all of those with you.

MR. LATIMER: If he did and if I saw Joyce Sanson,

it was an oversight on my part. I don't remember seeing it.

THE COURT: What possibly leads you to believe you will need her for rebuttal at this stage? The defendants have presented no evidence. I don't know how you can possibly be --

MR. LATIMER: The defendants are going to present some evidence.

THE COURT: I will deal with that later on. I will see what we need to do.

MR. LATIMER: It would be less expensive to send her to Bedford Hills and bring her down to Rikers Island--

THE COURT: Let's proceed.

C A R O L C R O O K S, resumed.

DIRECT EXAMINATION CONTINUED

BY MR. LATIMER:

Q Carol, just before the lunch break, you testified that at about 12:35 P.M. you went into the room where you saw Captain Woolley, Lieutenant Cradle and Mr. Smith. Taking it from that point, had you received advance notice that you were going into that room?

THE COURT: That was asked and answered this morning. She had not.

MR. LATIMER: I'm sorry, your Honor, I --

THE COURT: Let's go.

Q What happened when you went into the room?

A Miss Cradle asked me to come into the room. I entered the room and I asked Miss Woolley, "Why do I have to come in here? I am waiting for housing area, to be placed in the housing area." She said "We have something to tell you." So she slid a lined piece of paper with some writing on it to Miss Cradle, and she asked me to have a seat. This was Captain Woolley that was speaking. I sat down and I said "Why do I have to see all this other people?" She said "Well, I got some information for you, that I had brought from the main building, from Miss Warne." I said "From Miss Warne?" She said "Yeah." So I said "Go ahead." She said "You are going to remain a resident of segregation." I said "A resident? What do you mean by resident? You mean I can come back and do my things and eat and sleep here?" She said "No, you are going to be a resident here for a 24-hour period." So I says -- this is like 24 hours a day. That's what I am referring to. So I said "Miss Woolley, what do you mean by being a resident here and you don't have no program set up and I just came out from doing all my time?" I seen everybody I have to see. I was supposed to be released on the 23rd. Now you tell me I am a resident?" So she said "Okay, I figured you always going to come up with something like this." She said "What else you got to

tell me?" She said "Miss Warne says that you can have a limited amount of commissary, that you can't have lettuce and tomatoes flinging all around here, you can only have a certain amount for yourself, and also that you are to see the adjustment clinic once a week." We also got back into the thing where she had told me those two other subjects. I told her that I wasn't the type of person that liked to go to candy stores. I was in a college class, I was in a high school equivalency, I been in the college class sincelast July and I would like to finish and complete that. When I was talking about the college class, she automatically referred herself to speaking to Mr. Smith. She asked him was it still going. He says that they are out, they should be out, but he doesn't know when, they supposed to be notified by the dean of college when they supposed to start up another college class. This is Westchester Community College.

THE COURT: What was the date of this conversation?

THE WITNESS: This is on the 23rd, May 23rd.

So he says "As far as the high school equivalency class, it starts again July 1, the open season for school." So I said to him, "Well, being that you all don't have nothing set up for me, what am I going to do?" I said "I would like to go run over in that gym and exercise myself, I would like to participate in the night activities, the day activities,

all the things that they are doing. I did my time." So she says to me that they was thinking about making this a detention home. So I said "What do you mean by a detention home?" I said "I am doing zero to 15. I am sentenced in the prison to do time. But detention home means something like Westchester where I just came from, where people wait to go to court. This is the segregation. How is these officers going to govern, me being in segregation and me being a resident? They can't even work segregation, much less work a residence." Where, before we had gotten into that conversation, I asked her before, "You mean when I am going to stay in seg, that I am going to be locked like everybody else?" She told me no, I was out of seg lock, but I was a resident.

Q So that you were to be in a segregation wing but you were not to be locked in 23 hours a day?

A No. I was to stay -- remain there and use that little yard, and I wasn't to get any school. I told them about my medical beef, that I was waiting for my glasses, the glasses I have now, Miss Jan had brought them to me last week. I didn't have no glasses. In January my glasses got broke.

Q Did anything further happen at the adjustment committee that day?

A The adjustment clinic, no. They told me that they would -- I asked them about -- Judge, I got --

THE COURT: Isn't there a paper, isn't there a record of the holding or determination of this adjustment committee?

THE WITNESS: Excuse me, your Honor.

THE COURT: Don't volunteer. Your attorney will ask you questions.

Q Carol, were you given a report of the adjustment committee's action on May 23rd?

A No. They said they weren't the adjustment committee, they was only coming over bringing orders from Miss Warne.

Q You didn't see -- they didn't show you any report of their action that day?

A No. There was no report. Woolley said that she had just came over to give some orders that Miss Warne had laid out for me, and that was I was to remain a resident in seg.

Q You have been before the adjustment committee a couple of times, hadn't you?

A Yes.

Q Had you ever seen a written report of their action?

A Never.

Q They just advise you of their actions orally?

A They read them off and you don't know what's on them.

Q After the adjustment committee tells you that you are going to do a week in seg or that you are going to lose privileges, or something, do they give you a written report or is it just an oral statement to you?

A The adjustment committee itself is usually set up where the decision is already made before you come there.

Q That's not what I am asking. I am asking if they give you a written report of what they do?

A No, they don't give us no written reports. We are not informed. We only get a pass to go to certain areas.

Q You then walked out of the room where those people were, is that right?

A No. I had asked, I said "Being that you don't have anything set up for me," she told me she had to get back to Miss Warne and find out the other things that I can have to find out could I do certain things, and whatever else she is going to put down as a guideline, being that I was a resident, I asked her could she get me a television over, she said she had to get back and ask Miss Warne. I also asked for shaving equipment to shave under my personal parts, because it was my religious beliefs. I also asked for the beauty parlor to come over and do my hair being I was in seg so long.

She told me she would get back to me on that, and she would let me know about it. And I says "Is there any more?" She says "No," and I left the room.

MR. LATIMER: I would like this to be marked as the next exhibit for identification.

xx (Plaintiff's Exhibit 4 marked for identification.)

Q I show you Plaintiff's Exhibit 4 and ask if you saw that at any time before you came down to Rikers Island?

A No, I didn't see this until --

THE COURT: Any time before when?

MR. LATIMER: Before Saturday.

THE COURT: This is on the 23rd?

Q Yes, that's the May 23rd adjustment committee report, a copy?

A No, I didn't see this until you brought it to me, because there was no paper writing, no writing at that particular time. There was only a piece of line paper with some writing on it, stating the privileges I couldn't have, because Miss Woolley brought it from the main building and Miss Cradle told me the actual privileges I could have, but I kept sticking to Miss Woolley because she brought them and gave them to me.

Q On May 23rd when you left the room where you were interviewed by these three people, what did you do?

A I went out and I asked Miss Terry to give me some linen. She was locking the linen closet, because I had to clean my room, it was stripped, and everything. I didn't say anything. I put my linen in my room. Before I went to the corridor, in my room, the officer asked me was I going to come back and tell her some more about the service, you know, the new officer. So I said, "Okay, I will be right back, as soon as I put this down."

THE COURT: Please speak up nice and loud.

A (Continuing) When I left adjustment, left that room out of the adjustment clinic room known as the adjustment clinic room, I went and asked Miss Terry, CO Terry, may I have some linen, because I had stripped my room. She gave me the linen. I was on my way to go down the corridor and the officer there that I had been talking to earlier about the religion, Islam, she asked me was I going to come back and tell her some more. I said "Yes, as soon as I put this down." I went and throw the stuff on the bed and I came back and was talking to the officer, the same officer that I left. She was telling me of someone she had known was a Muslem, and stuff like that. Miss Woolley came out, me and the officer was laughing and joking, and Miss Woolley told me as she was on her way out, she said "Carol, I will get back to you as soon" --

MR. KANTOR: I object. This is certainly not responsive to any question.

THE COURT: It may or may not be. Let's get the facts.

Q Carol, were you locked in your room at that time?

A No. The whole day I was out, from the time -- from 9 o'clock in the morning up until 10 o'clock. Miss Doyle locked me in. She walked me to my room. She said "Okay, Carol, it is 10 o'clock now."

Q Is that the normal lock in time for --

A Not seg locks. It is only one hour.

Q Is that the normal lock in time for the general population?

A Yes.

Q On the morning of May 24th were you locked in your room or were you permitted to leave your room?

A No. Miss Terry let me out early.

Q About what time?

A Just before -- while she was -- she had set up the trace to serve breakfast, and I told her I didn't want breakfast because she started at my end first and I was in the last room. And I told her that I wanted to take a shower, you know. So she let me out. I took my shower. She tood me -- I wanted to help clean around, and stuff like that.

Q During the course of that day, we are talking now about May 24th, were you free to leave your room?

A I was free all day. She didn't consider me as a seg lock. When she fixed the breakfast -- see, I usually sleep late so Miss Terry doesn't bother me. When she come back to serve the breakfast, I had called her because I don't usually eat breakfast. I called her, I asked her could I take a shower, and she said "You are up early. You can come on out, go take your shower." I wanted to help around. She didn't consider me as a seg lock because that is what Miss Cradle told her, I wasn't a seg lock, there was no guidelines for me.

MR. KANTOR: Objection to what Miss Cradle told her.

THE COURT: Overruled, if she fixes a time and place and who was present.

THE WITNESS: Miss Terry was present, Miss Walker was there and also I was present and Miss Cradle was going behind the desk --

THE COURT: That was the day before, wasn't it, May 23rd?

THE WITNESS: May 23rd, yes, because Miss Woolley had left.

THE COURT: Frame another question. Proceed on a question and answer basis.

Q This conversation with Miss Cradle and those other two women, what was said? What did you hear them say to each other about your status in segregation?

A Well, Miss Terry went in there after Miss Woolley had left and Mr. Smith had left, that she went in there to speak to her, I don't know what they say. But as they was coming out, she had to go to the phone because therewas a call.

Q Who is she?

A Miss Cradle, Lieutenant Cradle. There was a phone call to her. She kept on saying, you know, that nobody have no orders, we had to wait and see what Miss Warne said. "As of now she is not a seg lock, she is a resident."

Q Coming back to the 24th, you left your room to take a shower in the morning of the 24th, is that correct?

A Yes.

Q Did you leave your room at any other time during the day?

A I hadn't been there all day. Once I was out, that was it. See, Miss Terry, I usually don't wake up until 11 o'clock, generally. But that day I was up early.

Q But you had the freedom of the corridors in the seg room?

A Yes, I was out all day. I was out since the day

before that.

Q Did there come a time on the 24th that somebody told you to lock in?

A At five to 5, me and Leslie Mason was sitting in the rec, which is --

THE COURT: Just answer the question yes or no. Did somebody tell you to lock in?

THE WITNESS: At 6:05 they did. We overheard a conversation.

Q Can you tell us what happened and what the conversation was?

A Miss Doyle had been talking to Miss Woolley on the phone for about an hour and she told me that -- she told Miss Woolley that she had tried to explain to me and she told me to come around to the desk. She said Miss Woolley said that I am not a resident now, that I am a seg lock. So I said "Miss Doyle, that is not what they told me." I said "Miss Doyle, I don't know what Woolley is trying to put down there, but she told me I was a resident, I was supposed to leave the 23rd. I haven't did nothing. I don't know why I am here." I asked her to get me a written statement back from Miss Warne. Miss Warne sent me a thing but she never mentioned all the things that was sent over there.

Q Was this conversation in a normal tone of voice, in

a loud voice?

A It was normal because Miss Doyle got a soft voice. There is no reason to talk loud to Miss Doyle.

Q Then what happened when you told Miss Doyle this?

A Miss Doyle said, "Well, that's what Miss Woolley said." I said "Miss Doyle, check in the book." She says "Yes, I see it here, you supposed to be released on the 23rd." So she said "Miss Woolley said that you are a seg lock now."

THE COURT: You are a what?

THE WITNESS: A seg lock now. I was no longer a resident any more on the 24th of -- at 6:05.

Q Can you explain to the court what a seg lock is?

A Locked in segregation.

THE COURT: That's a person who is locked up except for the recreational exercise period of one hour?

THE WITNESS: That's right.

THE COURT: She told you that that's what you were.

THE WITNESS: She told me that's what I was again. I asked her would she call back and tell Miss Woolley that I would like to call my lawyer, and would she put all that in writing, because I would go anywhere she wishes me to go, just as long as she puts it in writing, that she had told me I was a resident and also that she had told me that I

could have limited commissary, and also she told me I was supposed to see the adjustment clinic every seven days and also that I am a seg lock now." Then she got back on the phone and she talked to Miss Woolley for another half hour, which was 5:35 when she got off the phone. She told me Miss Woolley told me I could not make a phone call to my lawyer, that I should write, and that I had made a monthly phone call and I cannot call my lawyer, I cannot call the mosque, that I should write. They also told me that she will not give me anything in writing, and she told me -- she told Miss Doyle to tell me also that "To let Carol think about it and then I am sure she will go in."

Q Did there come a time on the 24th that you did go back into your cell?

A When Miss Doyle got back on the phone again and talked to her, yes.

Q You went back into your cell?

A No. She talked to Miss Woolley on the phone, like I said. You know, that was seven or six -- I think it was 6:35 or 6:40. Anyway, at 6:45 Miss Woolley and all the men -- first Miss Brock came in, Sergeant Brock came in, Miss McNeil came in.

THE COURT: He asked you a question. Didn't there come a time when you did go into your cell?

THE WITNESS: Yes.

THE COURT: You have to answer yes.

Q Could you explain the events or describe to the court the events that led up to you going into your cell, which I believe you were in the process of doing?

A She said she wouldn't give me anything, and I had got a letter from my lawyer telling me that he can state I can also trying to communicate with the administration, and I left.

THE COURT: She told you you had to go in, is that right?

THE WITNESS: Yes.

THE COURT: Then you did go in, is that right?

THE WITNESS: Yes.

THE COURT: Let's move along.

Q Did you observe, at that time, any unusual activity on the part of the either correction officer or prison officials in that area?

A There was male guardsmen, helmets and night sticks and there was a lot of women officers.

Q Where were they?

A The male guards was held outside the door. Miss Phillips was talking to them, that she is going to volunteer, in the light of the female officers was inside, like the

rec was crowded. Miss Woolley kept on telling me in a nasty manner, I am wasting time, get in.

Q Do you know of any reason that the officers-- that that many correction officers were required at the segregation wing?

A There was no reason for it. All I asked is a written statement.

Q Do you know --

MR. KANTOR: I'm sorry, your Honor.

THE COURT: She said there was no reason for it. All she had asked for is a written statement.

Q Do you know if there was any disturbance in any other part of the segregation area at that time?

A No.

Q Have you been free in terms of the same status that you were on on May 23rd and May 24th since then?

A No.

THE COURT: It is not quite clear to me what that means.

Q Have you been locked in since May 24th?

A I have been locked in ever since the 24th.

Q When was the next time that you were interviewed by the adjustment committee?

A They locked me in for four days without no shower,

and my sink was stopped up.

MR. KANTOR: Objection. Not responsive.

THE COURT: Yes, it is not responsive. He asked you when did you next go before the adjustment committee.

THE WITNESS: I went in front of them seven days-- wait a minute. Seven days later, the next Thursday, the following Thursday.

Q That would be the 30th?

A Yes.

Q Did you have a conversation with Lieutenant Waterman on the 30th?

A No. I didn't see Lieutenant Waterman. I seen her when I was coming in -- I had just seen Miss Jan Smith.

THE COURT: He is asking you when you went before the committee.

THE WITNESS: No, I didn't go before the committee with Miss Waterman.

Q What happened when you went before the committee on the 30th?

A That Thursday, excuse me, I didn't take the seven days. Miss Cradle had seen me on a Monday. Miss Waterman told me on the phone that my privilege was restored to me.

THE COURT: Aren't there records of this committee

as to what they did?

MR. KANTOR: Yes, your Honor.

MR. LATIMER: And some of those records are -- some of the dealings of the committee are at issue in the case.

THE COURT: Are the dates at issue, when she went before the committee?

MR. LATIMER: I believe they are, your Honor.

Q Carol, did you go before the adjustment committee on May 24th?

A No. No, I was locked in.

Q Did you appear before the adjustment committee on May 26th?

A Yes.

Q Can you tell us what happened-- can you tell us who was on the adjustment committee on the 26th? If you remember.

A Most of the time I was seeing Lieutenant Guenther. She was the one that I was always seeing. I seen Miss Cradle two times.

THE COURT: Don't you see three people when you go in the committee?

THE WITNESS: Yes, but the lieutenant is the one that had been doing all the talking to me. The civilian workers don't talk to me.

THE COURT: You see all three of them, don't you?

THE WITNESS: Yes.

Q When you went before the committee on May 26th, who was there besides Lieutenant Guenther, if you remember?

A Mrs. Dale--

Q What did they say to you when you walked in the room on that day?

A She told me to have a seat. I told her I would remain standing. I just came to hear what they had to say.

Q What happened after that?

A I asked her to read off the charges to me of what I am here for. She told me I knew what I was here for. I said "No, every week I come here there is something new, so would you please read off all the charges." So she read off the -- that I had to report for a towel up to my window. Also that I refused to lock in on the 23rd and also that on the 26th she told me that I was here for assaulting four female officers. That was the original charge, she said.

Q You had already been punished for that?

A I told her --

MR. KANTOR: Objection.

THE COURT: Sustained.

MR. LATIMER: I withdraw the question.

Q On the 26th you were-- these charges about covering

up the window, and the other one, did you receive advance notice of those?

A I never received any advance notice. I was just supposed to see them in seven days, and sometimes I didn't.

Q But the 26th was less than seven days from the 23rd, is that right?

A Yes, because Miss Cradle had seen me on Monday.

Q They brought up new charges about covering your window?

A Yes.

Q Did you in fact cover your window?

A Yes, I did.

Q Why?

A To hide my personals, that's all.

Q This was which window in your room?

A This is on the door. The door window to your cell.

Q Did you refuse to lock in on the 23rd?

A No. They let me out.

Q What did the adjustment committee do to you at that time on the 26th? If they did anything.

A On the 26th Miss Guenther informed me that they can extend it longer than 30 days because I was only aware that the adjustment clinic can go to 30 days. She told me they can go 90 days, the commissioner can go longer than that.

She said they can keep me for a mighty long time here.

Q Did you have a conversation with Lieutenant Waterman on or around May 30th?

A That was when -- I had come over from seeing Jan Smith and Cindy Reed was holding up Lieutenant Waterman and she wouldn't lock in the room, in a certain room they wanted her. So I knocked on the door and I told her that I could talk to my sister. So she let Cindy Reed talk to me. She told me, "After you finish talking to her, I want to talk to you."

Q Did you speak with Lieutenant Waterman at that time?

A I only spoke to her while she was behind the desk, on the phone.

Q Lieutenant Waterman?

A Yes.

Q What did she say to you and what did you say to her?

A She said "The adjustment clinic have left. The committee had left but I am supposed to tell you that your privileges are restored again." I said "Thank you. Anything else?" She said "No," and I went back in the corridor.

Q Did you see any written report of the adjustment committee at that time?

A No. She was telling me behind the regular desk.

Q Did you have an interview with the adjustment committee at that time?

A No. I just saw her.

Q Do you know who was on the adjustment committee on that day?

A No, I do not.

Q When is the next time you saw the adjustment committee?

A I seen them on the 6th.

Q What happened on the 6th? Who was on the adjustment committee on the 6th when you saw them?

A That would be Lieutenant Guenther because that was the one I was mainly seeing. I believe that on the 6th, I am a little bit ahead of myself --

THE COURT: Speak up, please, nice and loud.

A (Continuing) On the 6th I think it was two lieutenants.

Q Was Mr. Dale on that committee?

A Yes. Mr. Dale, Miss Schultergrandt. Miss Schultergrandt is the correction officer. I had seen --

Q Tell us what happened -- did you receive advance notice that you were going to see the adjustment committee on the 6th?

A No, I had not received any advance notice.

Q You walked into the adjustment committee room on the 6th?

A Yes.

Q You saw Lieutenant Guenther and Mr. Dale and the other officer. What happened when you walked into the room?

A This time I believe that I had sat down and I had talked to her and I asked her what did she want from me, did the administration want from me. She told me that they wanted to make sure that I wouldn't assault any more correctional officers and also that I would abide by the rules, and I told her, number 1, I cannot say a yes or no to the correctional officer because I am in court now and I am facing anywhere from 25 to life from them. I said "As far as abiding by the rules, I never received any rules. If you give them to me, I will try my best." She said "I don't want to hear trying." I told her, "Look, I was here before, I did three years, 34 months, and the board man asked me would I come back again if he let me out on parole. I am here doing zero to 15 now. I can only speak for what's now, how I feel now. I can't predict my future or what I am going to do in the future. I can only tell you that I am going to try to abide by your rules." She said "Well, what about the incident with the officer?" I said, "Look, if an incident

like that occurred again, what would you do?" I say, "I will tell you, I will try to stay away from it than run into it."

THE COURT: Are you under a pending indictment?

THE WITNESS: Yes.

THE COURT: With a charge of assault?

THE WITNESS: Yes.

MR. LATIMER: Yes, she is, your Honor. That's in Westchester County now.

THE COURT: Involving the same incident with respect to which she had the superintendent's hearing?

MR. LATIMER: That's correct.

MR. KANTOR: That's correct.

Q Did the adjustment committee on the June 6th meeting comment on your behavior since May 23rd?

A She asked me how was my behavior. I told her "I don't know. You will have to tell me yourself." She said "They don't write no good reports and verbally your behavior is good." My whole time, my 60 days my behavior was good.

Q They told you that?

A Yes. Miss Woolley told me that, in fact, on the 23rd.

Q Did you say anything in response to that?

THE COURT: You are still talking about the 6th?

MR. LATIMER: The 6th.

Q Did you say anything in response to that?

A I said "If my behavior is good, what am I doing here?"

Q Did they at any time say anything with respect to the length of time you were going to be in segregation?

A They told me I will be seeing them in seven days.

Q They didn't give you an indication that you were going to be released?

A No, they didn't.

THE COURT: No new charge on the 6th?

Q Were you advised of any new charges on the 6th?

A No, I was not.

Q When was the next time that you saw the adjustment committee?

A I seen them on the 13th.

Q What happened on the 13th? Do you remember who the adjustment committee was at that time?

THE COURT: Shorten it. Ask her whether it was A, B and C.

Q On the 13th was the adjustment committee Lieutenant Cradle, Mr. Dale and CO Schultergrandt?

A Yes. Miss Cradle said there would be no adjustment clinic with the exception of me, that they had to send reports to Albany on me, and did I want to see the adjustment

committee. I said if I am not being released it doesn't make any difference. She said "We have to have it anyway." I was out mopping and she told me to come in. Mr. Dale had came there, also Miss Schultergrandt had came in. She came empty handed and they took a piece of paper after sitting down, I sat down, and she says "Oh, you sitting down?" And I told her "Yes, I had braces put on and it was hurting." So we started talking about the braces. Mr. Dale said he needed some for his two kids.

Q Braces on your teeth, you are talking about?

A Yes, and I got permission.

Q Were there any new charges against you on the 13th?

A No, there was not. Because she didn't have no papers with her.

Q Did you receive any advance notice that you were going to see the adjustment committee on the 13th?

A No, I was just told the week before, I would be seen in seven days.

Q Was there any comment made about your behavior during the past seven days?

A Miss Schultergrandt said as far as the days that she had been working there, my behavior have been good and I participate in help, volunteer.

Q Did you see the adjustment committee again on June 20th? That's a week later.

A Yes.

Q The adjustment committee at that time, did that consist of Lieutenant Guenther, Lieutenant Wilson, Mr. Dale and CO Hughes?

A Now I got myself mixed up. Yes, that's the conversation that I was speaking to them that I had told them about -- that I can only try to relate to what I feel now, not in the future.

Q There were four people on that adjustment committee, is that right?

A Yes.

Q Do you know why there were four people instead of three at that time?

A Well, Lieutenant Wilson was holding the adjustment committee, but they told me when I came out of the shower, is I going to see the adjustment clinic, and I said no, I had to wait until Lieutenant Guenther came over. All four of them were sitting, but Lieutenant Guenther did all the talking.

xx (Plaintiff's Exhibit 5 marked for identification.)

Q I show you Plaintiff's Exhibit 5 which is entitled "Superintendent's action on review of adjustment committee

report. Name of inmate, Carol Crooks. Date of report, June 22nd." I ask you if you received that from the institution?

A Yes, I did.

MR. LATIMER: I show it to counsel.

MR. KANTOR: No objection.

THE COURT: It will be received in evidence.

xx (Plaintiff's Exhibit 5 was received in evidence.)

THE COURT: Special housing unit is not punitive segregation, as the court understands. Is that so?

MR. KANTOR: Your Honor, the special housing unit serves two purposes. It is for punitive segregation, also for segregation of prisoners from the general population for their own protection or for other reasons.

THE COURT: But there is a different criterion of what you can do, depending on which classification you are in, isn't that so? I don't mean to interrupt the examination.

MR. LATIMER: I would bring that out.

MR. KANTOR: We can defer that until Miss Warne gets on the stand.

BY MR. LATIMER:

Q Is there any indication on Plaintiff's Exhibit 5 when you were going to see the adjustment committee again?

A She told me I was supposed to see them on the 27th.

Lieutenant Guenther had got the date--

Q When did you see the adjustment committee again?

A I haven't seen them since.

Q Did you see the committee on the 24th or 25th?

A I seen them on Monday because additional charge sheets that was brought up against me from CO Doyle, she gave me five charge sheets.

THE COURT: When was this, now? What date are we talking about?

MR. LATIMER: Monday would be the 24th.

THE COURT: They have down here the 20th.

MR. LATIMER: That report is dated the 22nd.

THE COURT: It says reappearance and reports on the 20th.

MR. LATIMER: We discussed that, already, your Honor. She had been before the committee--

THE COURT: On the 20th as well as the 13th?

MR. LATIMER: Yes.

Q Did you receive advance notice of those --

THE COURT: This is the 24th?

Q Of those charges on the 24th?

A No, I did not. The whole segregation was locked up, wrote up for the same purpose.

THE COURT: What was the purpose?

THE WITNESS: Inciting to riot because we wouldn't volunteer to wash dishes.

Q Did you in fact incite to riot?

A Everybody got the same charge sheets.

MR. KANTOR: Objection, irrelevant.

THE COURT: Probably not relevant but I will permit it to be answered. He is asking you whether you did anything.

THE WITNESS: No, I did not.

Q Have you seen the adjustment committee since?

A No. Lieutenant Guenther, when I asked her was she going to see me on Thursday, she said no, didn't I see her enough Monday. I said "That was pertaining to the new charge sheets. I been here over" --

Q What was the disposition of those new charge sheets?

A The disposition was that I was--

Q When you went to the adjustment committee on the 24th.

A They didn't want to hear what I had to say.

Q Did they do anything to you?

A They told me Miss Doyle couldn't be wrong, and I asked her how is she going to verify my --

Q Did they impose any new restrictions on you on that day?

A They told me it is going to go pretty bad against me. They are going to send a report up.

Q Since you have been in segregation on the adjustment committees say-so since May 23rd -- right?

A Yes.

Q Have you always had hot water in your cell at that time?

A No.

Q Can you tell us what periods of time you didn't have water in your cell?

A Starting from the 9th to the 23rd. I had told them that my sink was stopped up, so to the 24th, when I was locked with four days, my sink was already stopped up, it had dirty water, and I had informed the officer that is in charge of segregation, and the days I couldn't take a shower, I could only get drinking water. I couldn't wash.

Q Your sink was stopped up from May to --

A Until the day that I had got locked--

MR. KANTOR: If your Honor please, I believe this is beyond the scope of what we discussed at the beginning of this trial.

THE COURT: I think it probably is. Sinks do get stopped up, even in the best hotels. If you can make a showing that it was intentionally put out of commission by anyone,

that would be different.

MR. LATIMER: I will attempt to do so, your Honor.

THE COURT: How many days was it stopped up?

Q Carol, how many days was it stopped up?

A It was stopped up from the 9th when I first got there. I informed Miss Vedine about it, the night officer, and I also told the morning officer the next morning. Being I was taking out of showers, I was told they are going to get somebody over here. They had to see the lieutenant to come over and tell them, and they will get somebody to take care of it. Get a rush job. When relocked me up on the 24th for refusing to lock in, they locked me without coming out for four days and my sink was already stopped up with dirty water and the only thing I could get out of it was drinking water.

Q Was there ever a time that your water was off permanently, totally?

A Yes.

MR. KANTOR: Objection.

THE COURT: I don't understand that to be within the scope of the issues.

Q Carol, you heard testimony this morning about a Diane Long. Were you involved with an incident with her at any time?

A Yes.

Q Can you tell the court what happened?

A Me and the sister had an argument and I hauled off and slapped her in the mouth.

THE COURT: This is inside the correctional institution?

THE WITNESS: Yes.

Q Can you tell us when that argument was?

A I can't tell you the precise date. We had been coming from Muslem service.

Q Can you tell us what the argument was about?

A It was about finding contributors for black solidarity for the whole population.

Q Do you get along well with the other inmates?

THE COURT: Basically, this is a due process case, and I can't go into the ultimate merits of whether she gets along with the other inmates or not.

MR. LATIMER: One of the allegations in the answer is clearly the fact that she is being kept away from the inmates for her safety and for the inmates' safety.

THE COURT: But, you see, it is a due process question, and if they followed procedures and they make a finding, that finding would have to be honored in this court, in the absence of proof of evil motivation or something arising

of a constitutional magnitude. I will permit the question to be answered, but I don't want to get off on a side issue here. We are trying a due process question.

MR. LATIMER: That's correct, your Honor.

THE COURT: If they hold a proper hearing on proper notice, with proper due process and procedure rights, they can make a finding. This court would have to abide by the finding.

Q Carol, do you get along well with the other women in the institution?

A I get along just like everybody else. Some people can get along, some can't. I keep to myself most of the time.

THE COURT: You know you can't strike another inmate, isn't that right? You know that?

THE WITNESS: Yes, I know that. Me and Diane Long was real close friends for a long time before that. Now we are behind -- you know, the incident that happened, we still Muslem sisters and we are just as much close friends as then, but it took a long time to mend.

Q Going back to the adjustment committee meetings, Carol, at any time during the adjustment committee meetings since May 23rd, were you given more than just a few minutes' notice that you were going to see the committee?

A No.

Q Were you ever given the opportunity to present witnesses on your behalf?

A At the adjustment clinic?

Q The adjustment clinic.

A The last five charge sheets I asked for, they told me no. I took the papers and I told them I bring them to the court.

Q Were you ever given a written disposition of any of the adjustment committee--

A Nothing. I had asked, I had requested that before, and they told me that I could not have it. Miss Woolley even informed me, told me it is not necessary that the adjustment clinic give me a copy of anything.

MR. LATIMER: I have no further questions at this time.

THE COURT: We will take a short recess. Can I see counsel in chambers?

(In the robing room.)

THE COURT: I am somewhat puzzled by the regulations here. I think it might be helpful for me to know what position the defendants take with respect to the regulations and the power thereunder. I call your attention particularly to the fact that in this Chapter 5, part 253, where they talk about a superintendent's proceeding, the

superintendent's proceeding, after certain procedure have been complied with, may provide for what could be described as punitive segregation for a period not exceeding 60 days. In this prior chapter or prior part of the same chapter where they talk about the adjustment committees, there is some indication read literally that perhaps they intend that the adjustment committee can impose greater or more extensive segregation than the superintendent could impose, and that seems, in view of the appearance of the statutory scheme here, and the fact that greater procedural safeguards are provided with respect to the superintendent's proceeding, it seems rather puzzling and illogical. Is that a fair reading of it, Mr. Kantor?

MR. KANTOR: Your Honor, at first when I read it I was quite confused as well. My understanding is that the adjustment committee is a program committee that serves almost as a parole board. It is an inquiry into whether or not the inmate has expressed some kind of sincere desire to comport with the rules and regulations, abide by the security of the institution, and so forth and so on. I think there is a distinction that must be drawn between a superintendent's proceeding which can impose any number of penalties, including in each one of the penalties in this case here, impose 60 days punitive segregation, it can

impose --

THE COURT: That's about the most severe sanction it has, isn't it, 60 days punitive segregation?

MR. KANTOR: Plus loss of good time. In addition, it can refer a matter to the adjustment committee.

THE COURT: Is it a fair reading of these rules to suggest that the superintendent could impose 60 days punitive segregation and then refer to the adjustment committee and they could add another 62 days, provided only that they see the client once a week?

MR. KANTOR: I believe, your Honor, that they can only do it in seven-day stints. It can be done successively. I believe the rules are quite specific when they say it can be done--

THE COURT: Without limit?

MR. KANTOR: I would say that at some point it would become crucial and unusual punishment.

THE COURT: Is that a fair construction of your own rules? Is it reasonable that in part 253 they would give the superintendent power to have 60 days maximum punitive segregation and that the same people writing at the same time in part 252 would give the adjustment committee the power to impose 15 years of punitive segregation, so long as they see the defendant or client or inmate once in seven days?

MR. KANTOR: No, I don't think that is a fair statement. I think what is a fair statement is that the adjustment committee can impose a limit of seven days segregation but they can also say "We wanted you to come back and see us at the end of seven days." Then at the end of seven days there is another proceeding, and they can impose a second seven days. They can do this up until I believe it is 30 days and then it has to go to the Commissioner of Corrections.

THE COURT: Where do you find that? That certainly seems logical, and I have been groping through these regulations while I have been listening to the witnesses here, and I certainly think that's logical. It is certainly illogical that the superintendent's power after a formal hearing would be less than the power apparently granted to the adjustment committee. I'd like you to find that for me in the regulations, because it certainly seems what would be expected to be found there.

MR. LATIMER: I submit that the current case bears out the court's interpretation of the regulations.

THE COURT: Many of the issues in this case, Mr. Latimer, have been solved for you by the Supreme Court in this case which I gave you copies of this morning.

MR. LATIMER: I would still submit that the procedures

Carol has been subjected to fall short of the requirements--

THE COURT: They clearly do.

MR. KANTOR: I suggest the ruling in Wolff is not retroactive.

THE COURT: It is not retroactive, but the seven days since the 26th of June will soon be up.

MR. KANTOR: And I have been conversing with my clients about what is going to be needed to be done in light of Wolff.

THE COURT: We have another issue here. As I understand it, you could take a disruptive prisoner and put him in a separate wing or in a separate block --

MR. KANTOR: If we did.

THE COURT: And if you gave him his opportunity to socialize with the rest of the inmates in there and if you gave him his exercise and his privileges in the nature of a quarantine, they could do that. That would not be punitive segregation. That is just isolating a troublemaker. That's a different question entirely. But it looks to me as if they weren't really quite sure of what they did here. It might be helpful to look at their reports.

MR. KANTOR: I intend to introduce the reports in evidence.

THE COURT: You are not bound by them, but they are

a good starting point.

MR. LATIMER: There are some things in some of the reports that are quite favorable to us but I have to wait for him to introduce them.

THE COURT: You bring them in here because I want to see if I can't get to the bottom of this problem and resolve these difficulties in a fair manner which will give rise to the -- which will give effect to the new case here, this Wolff v. McDonnell, because I think that answers a great many of the problems here. I doubt very much that in the absence of either a new charge or an objective determination, I don't think you can keep her there any longer. I admit that all proceedings prior to June 26th would be regulated by the nonretroactivity of the Supreme Court decision, but seven days will be up very shortly.

MR. LATIMETER: Your Honor, I would submit that the precedents before Wolff mandate at least those proceedings, and I would believe the issue for the court.

THE COURT: I don't think so. I think the Wolff case purports to lay down the full rules here. To the extent that it may be inconsistent with some Circuit Court cases that are prior in time, we would be controlled by the most recent pronouncement of the Supreme Court. But I don't think, unless they gave mere 24 hours' notice, and unless they gave

her some objectively determinable charge -- like "You put a towel over your window," if that's a breach of the rules, then they can put her in seven days segregation of a punitive nature for that after giving her the hearing. But they can't just say " Well, you are still -- you still have evil motivation and we are keeping you in because of the conduct which you already were sentenced to sixty days on by the superintendent."

MR. KANTOR: I would submit, your Honor, that while we could go and argue this here and in the circuit and in the Supreme Court, the point is that the original superintendent's proceeding probably I think expresses such a disposition that the point is that you have a right to have facts determined. The facts are determined. Then there is a question of penalty to be imposed. I don't think there is any requirement that the penalty be a definite penalty, but could be subject to some kind of review at future times.

THE COURT: You are bound by your rules. The only thing, as I read your rules, the only thing that you could do when seven days have passed since the last finding of your adjustment committee is to tender to her on 24 hours' notice an objective issue. The issue could be as simple a one as the suggestion that "You are not penitent and you are

not willing to take up residence in the main body of prisoners and abide by the rules and regulations and refrain from assaulting people." That is an issue of fact, whether she is or not, and they can hold hearings on that and make a determination. But they would have to follow all of the procedures required in the Wolff case. Of course, the requirement for good faith is implied also. But it seems to me that there has to come an end, unless you have a new hearing and new findings. Otherwise she could stay there for 15 years.

MR. KANTOR: I submit, your Honor, Section 253.5A8, which is one of the dispositions authorized by the regulations, by a superintendent proceeding, says referral to the adjustment committee for such action or further action as they may deem necessary.

THE COURT: Appropriate, it says. Within the limits of the action the committee is authorized to take.

MR. KANTOR: One of which is to place or keep in punitive segregation for successive seven-day periods.

THE COURT: I don't think you can have them successively unless they are based on a state of facts found to be in existence as of the commencement of each successive seven-day period. If they held a hearing and gave her proper notice and said "You are still bound and determined

to make trouble when you return, you haven't repented and it wouldn't be" -- that would be a finding of fact, wouldn't it? As far as saying "Well, we can keep regurgitating on the prior finding," I don't think they can do that.

MR. LATIMER: Even the superintendent's review indicates that she has expressed a desire that she go--

THE COURT: Expressing a desire and having it are two different things. I think your procedure is defective here, and I think the coming in of this case injects a new element into it. You ought to take a practical view of this thing and see if something can't be done with respect to it.

MR. KANTOR: I suggest, your Honor, that I am not here going to make a representation to the court of what the Department of Correctional Services is going to do in Albany.

THE COURT: We create unnecessary conflict between federal and state officials here, when the case law is now laid out for you fair and square, and you can see it. You have this plaintiff who has been in there quite a while, you have the total separate question of whether she could be housed separately in the nature of a quarantine. I don't think that presents the same issue at all. You ought to do something practical with this case.

MR. KANTOR: Certainly my hands are tied by my clients and by my client's bosses.

THE COURT: Clients have to follow the advice of counsel. If the Attorney General heard you say that, he would be disappointed. He would expect you to tell your client not only what is lawful to do but what is fair and right to do to resolve the thing, and there would be one lss reported opinion on the books here.

MR. KANTOR: I have not consulted with--

THE COURT: This injects a new thought.

MR. KANTOR: I read that over the lunch hour. It was the first time I saw it.

THE COURT: I'd like to make the time count here and I'd like to continue the hearing, but I think you ought to take a sensible view of the whole picture.

MR. KANTOR: I was hoping to settle this, I was hoping that she would come out and I could walk in here and say to your Honor that this is moot, but that did not happen, and we are here.

THE COURT: This is the only ladies' penitentiary in the state, is that true?

MR. KANTOR: That is not entirely correct. Women are housed at Matteawan.

THE COURT: But they have to be psychiatric.

MR. LATIMER: Isn't there a farm nearby?

MR. KANTOR: They are opening up a farm in Fishkill, not too far in the future, but that's only for feeble-minded.

MR. LATIMER: Then, of course, the city institutions, which is for misdemeanors.

THE COURT: All right. Let's proceed as rapidly as we can. We will take a short recess.

(Recess.)

(In open court.)

THE COURT: Mr. Kantor, you may cross-examine.

CROSS-EXAMINATION

BY MR. KANTOR:

Q Miss Crooks, addressing yourself to the incident of February 3rd and the superintendent's proceeding of March 8th, were you given a notice of charges?

A Yes, on March 5th.

THE COURT: I don't understand that it is contended that the original superintendent's proceeding was void in any way. Is that correct?

MR. LATIMER: No. We are not contesting the original superintendent's proceeding.

Q It is correct, Miss Crooks, that part of the disposition of that proceeding was the referral to the adjustment committee, is that correct?

A Yes.

Q You said that you met the adjustment committee on March 15th. Did that in any way relate to a review or any other action with regard to the superintendent's proceeding of March 8th?

A Yes.

Q It did? In what way?

A I saw the adjustment clinic, on the charge sheet, as I explained before.

Q What was that?

A Disassembling my bed and breaking the window in the door.

Q Did that have anything to do with the assault on the four correction officers?

A No.

Q So it didn't have anything to do with the superintendent's proceeding, did it?

A They referred me back to the adjustment committee.

Q Let me see if I understand you. The superintendent's proceeding dealt with an assault on four correction officers, is that right?

A Yes.

Q It didn't have anything to do with disassembling a bed or covering a window, did it?

A They did not tell me what the charges was then. They just told me I was referred to the adjustment committee.

Q Wait a second. You knew what the charges were at the superintendent's proceeding? Didn't you?

A The superintendent's proceeding, when they gave me the written charges on the 5th, it stated with four officers. I did not see anything about breaking the windows.

Q They didn't adjudicate it, did they? They didn't deal with that, did they?

A When I spoke to Miss Clement, she told me --

MR. KANTOR: Your Honor, please direct the witness to answer the question.

THE COURT: This breaking the window, did that occur after the date of the assault?

THE WITNESS: No, that happened on the same day, the 3rd.

THE COURT: At the same time?

THE WITNESS: No, later, 4 o'clock.

THE COURT: Later in the day on the same day?

THE WITNESS: Yes.

Q At the superintendent's proceeding on March 8th, was anything in any way said to you or were you apprised of in any fashion that they were dealing with the incident later on February 3rd where you disassembled a bed and put a

towel over the window?

A The superintendent's proceeding?

Q Yes.

A No.

Q So the March 15th adjustment committee proceeding didn't have anything to do with the March 8th superintendent's proceeding, did it?

A March 15th had a lot to do with the superintendent's proceeding because I was referred to the --

THE COURT: What he is asking you is, when you got this one week concurrent, that was for a separate incident, wasn't it?

THE WITNESS: Right.

Q You mentioned that when you returned from the Grasslands on May 6th, was it--

A May 9th.

Q You were shackled, is that correct?

A Yes.

Q You were shackled, is that correct?

A Yes.

Q Were you transported by state corrections officers at Bedford -- from Bedford Hills?

A No. Not on May 9th. I was transported by Westchester County.

Q Therefore, Bedford Hills didn't have anything to do with the shackling, did it?

A On March --

Q On May 9th.

MR. LATIMER: Objection, your Honor. She wouldn't know that.

THE COURT: She ought to know who put the shackles on, but it is really irrelevant to this case, isn't it? They transported it. The court knows that the sheriff undoubtedly took her back there when her proceedings were finished. That has nothing to do with the case.

Q Miss Crooks, you wrote a letter or a memorandum to Ms. Woolley on May 16th, that is Plaintiff's Exhibit 3 and you received an answer from Ms. Woolley informing you that the 60 days expired on May 23rd. Is that correct?

A Yes.

Q How did it come that you wrote this particular memorandum?

A Because they told me that the time that I was locked in segregation in Westchester, upon my arrival, does not have anything to do with up there.

Q Wasn't there a dispute in fact as to whether or not you were to be -- your 60 days expired on May 21st or May 23rd?

A No. I was just counting the days and she was counting the days.

Q Then could you explain to me --

A I told her I left on the 21st. She told me I left on the 22nd.

Q Can you explain to me, then, the meaning of the phrase "that makes I come out of seg on May 22, 1974"? That's your phrase, isn't it?

A What I was referring to there, I left at 10 o'clock-- 11 o'clock that morning on the 21st and I came back the same time, which filled up the 24-hour period. That's what the dispute was about.

Q Did you meet with the adjustment committee on -- you met with the adjustment committee on May 26th, is that correct?

A No.

Q You didn't meet with the adjustment committee on May 26th?

A I met with them on the 24th.

Q You met them on the 24th, is that correct?

A I was referring to this month.

Q Did you meet the adjustment committee on May 28th?

A No.

Q You didn't meet the adjustment committee on

May 28th? You are sure?

A I am sure. Everything fell on--

Q Did you meet the adjustment committee on June 6th?

A Yes.

Q That was Ms. Guenther, Mr. Dale and Correction Officer Walker, is that correct?

A I am not sure about Miss Walker. Yes, she was. Yes, she was.

Q Did you ask them why you were being kept in seg?

A No. At that particular time I asked them how long was they going to keep this up.

Q You didn't ask them why?

A I asked her why do I have to keep seeing them.

Q Did you receive an answer?

A What she did is--

Q Who?

A Ms. Guenther.

Q What did Ms. Guenther do?

A All she did is do the talking and read off my past reports.

Q Which reports were those?

Q That was refusing to go in, lock in, and also the curtain up to my window and refusing to eat. And that's it.

Also the four officers.

Q Were you told at that meeting that the reports were good?

A She told me verbally everything was good, that they don't write good reports, only bad ones.

Q Were you informed that the committee would not take action to release you at that time, that you would be seen within a week?

A I asked her how long I had to stay there.

Q Were you informed --

A Yes, seven days.

Q Were you seen on June 13, 1974?

A Yes.

Q At that meeting did you ask how long you would be held in seg?

A What date was that?

Q June 13th.

A Yes. I asked her that, I wanted to know when I could continue school.

Q Were you told?

A No. They said they would get back to me.

Q Have they gotten back to you?

A No. And when I was going to leave.

Q Excuse me?

A I asked them two things. When can I go to school and when was I going to leave.

Q They haven't gotten back to you with either of those?

A No.

Q Didn't they infact tell you that on the day you would be seen again in seven days--

A I seen them again in seven days but nobody ever made the decision on when I am leaving.

Q Let's try answering the question. Were you told in fact that you would be seen again in seven days?

A They told me "We will see you in a week."

Q Were you seen on June 20, 1974?

A Yes, I was.

Q Did you say you wanted to go to school?

A Yes.

Q You wanted to know what happens next? Did you say something like that?

A No.

Q You didn't say that?

A That is with Lieutenant Guenther?

Q I asked if on June 20, 1974, you said--

A Who are the people that is pres[illegible] sir?

Q Don't you rem mber?

A Mr. Dale and I am trying to think who was the CO.

Q Let's go on. I'd like these three reports marked for identification.

(Defendant's Exhibits B, C and D marked for identification.)

xx

Q I show you now Defendant's Exhibit B for identification and ask if you have ever seen this or a copy of it before?

A I seen Miss Doyle's signature but I haven't seen that statement.

Q You haven't seen this statement before?

A No.

Q I show you now Defendant's Exhibit C for identification and ask if you have seen this report or a copy of it before?

A We have the original copies and she didn't say nothing like --

Q Who has the original copies?

A She didn't say nothing like that.

Q Who has the original copies?

THE COURT: Don't yell, please.

MR. KANTOR: I apologize, your Honor.

Q Who has the original copies?

MR. KANTOR: Will your Honor direct the witness to answer.

THE COURT: Do you have the originals, Mr. Latimer?

MR. LATIMER: The original copies of what?

THE COURT: These exhibits that have just been marked for identification.

MR. LATIMER: No, I do not have the originals of these pieces of paper.

MR. KANTOR: Your Honor, there is a pending question.

THE COURT: I'm sorry. I don't quite understand. You say you do not have them. What are you handing to Mr. Kantor?

MR. KANTOR: The copies he gave to me.

THE COURT: Who has the copies?

THE WITNESS: That's from June 24th -- 22nd or 21st that you have on there?

Q That's right.

A Your Honor, they wrote 15 of us up for --

THE COURT: What he is asking you is this, who has the originals of those? Did you have a copy of those in the beginning?

THE WITNESS: Yes, I did.

THE COURT: Where is it?

THE WITNESS: I don't know where they are at, but I sent them out.

THE COURT: You sent them out?

THE WITNESS: Yes.

THE COURT: Where did you send them?

THE WITNESS: I gave them to another inmate.

Q You took original official documents and distributed them to another inmate, is that what I understand you to say?

A No. I did not say that.

Q How did you come by the originals of the copies of the documents I just showed you?

A The adjustment clinic did not want to listen to any version of anyone.

THE COURT: The question is did the adjustment committee give them to you or who g ave them to you?

THE WITNESS: No, I picked them up, your Honor.

Q You took them, is that correct?

THE COURT: How could you pick them up?

THE WITNESS: They was laying up on the table. I told them I was going to send them to you.

THE COURT: You just picked them up off the table like that.

THE WITNESS: Because they wouldn't listen to none of us.

Q Isn't it a fact, Miss Crooks, that you told the correctional facility officials that you destroyed those

copies?

A I did not.

Q Isn't it a fact that when you were asked to deliver them up you refused to?

A I asked them what were they talking about.

Q Didn't you know what they were talking about?

A They did not specify what they were talking about.

Q Didn't you know what they were talking about?

A They didn't specify what they were talking about.

Q How many times have you taken documents from the adjustment committee?

A That was the very first time.

Q So it couldn't be too many that they were referring to, could it?

A They said legal papers, and my room is filled with legal papers.

(Defendant's Exhibit E was marked for identification.)

Q I show you now Defendant's Exhibit E for identification and ask if you have seen the original of that before?

A Yes.

Q Would you mind telling me where and under what circumstances?

A They all way. together, five charge sheets.

Q In other words, you have seen Defendant's Exhibits B, C, D and E before, is that correct?

A Yes.

Q And those were the documents you took from the adjustment committee, is that correct?

A Yes.

MR. KANTOR: At this juncture, your Honor -- withdrawn. I am not going to offer them at this point.

Q Did you meet the adjustment committee on June 24th of this year?

A Yes.

Q Were you told why you were meeting with the adjustment committee?

A They read off the five charge sheets.

Q The five charge sheets that you subsequently took away, is that right?

A Yes.

THE COURT: I didn't hear the last answer. Were you told why you were meeting --

THE WITNESS: Yes.The five charge sheets, they read them off.

Q Did they give you an opportunity to respond to the charge sheets?

A Yes, they did.

Q Did you respond to it?

A They would not listen.

Q Did you respond to it?

A Yes, I did.

Q Did they make a determination?

A They said "We are going to lock you in." They had locked us for five days without coming out showers.

Q Were you going to be continued to be locked in that way, was that what your understanding was?

A I couldn't understand being locked in with no water at all.

Q Was it your understanding as a result of the adjustment committee proceeding that you were to be locked in for 24 hours a day?

A No. They did not say that.

Q Did they say that you were going to be kept in seg?

A They said that we refused to do assignment in seg. That is why we are being locked.

Q Did they make a disposition?

A They told us that we would not have no recreation period. Up to today, the women have not had a recreation period.

Q You don't know that, do you?

A Up until the day I left.

Q Which was the 28th?

A Yes.

Q Let's refer back to the incidents of May 23rd and May 24th. My understanding is that you testified that you had a conversation with Captain Woolley on that day?

A Yes.

Q That was the 23rd, right?

A Yes.

Q And that Captain Woolley said that you were going to be a seg resident?

A Yes.

Q Had you ever heard that term before?

A No.

Q Did you know what it meant?

A It meant living in there.

Q Excuse me?

A To live in there, just like the rest of the residents live up on the campus.

Q That was your assumption, is that correct?

A Yes.

Q You weren't told that, were you?

A When I asked her that, she says "No," I had to live there 24 hours a day, but not--

Q How did it come about that you weren't locked in?

A Because I was released from seg on the 23rd.

Q But she told you you had to be locked in, didn't she?

A She told me I had to live in seg, not locked in. Live there.

Q Does anybody live on seg without being locked in?

A Yes.

Q Who?

A Leslie Mason.

Q Do you know why Leslie Mason is in that particular situation?

A Leslie Mason is living on the campus now.

Q Isn't it a fact that Leslie Mason is a transsexual?

A Yes.

Q Wasn't it a fact that there was a problem as to whether or not she belonged at Bedford Hills or at one of the male correctional facilities?

MR. LATIMER: Irrelevant, your Honor.

THE COURT: It may not be. I will take it for what it is worth.

Q Isn't that a fact?

A I don't know about that.

Q Was she livin. in the same wing as you were living?

A We work. We was rec-ing together.

Q Pardon?

A We were out together. On the 24th we were out together, sitting in the rec together.

Q Where was she living?

A In the segregation.

Q In the same wing?

A In the opposite corridor, in the same wing.

Q Who lives in the opposite corridor?

A Now we have work release.

Q But at that time all they had was seg, right?

A Yes. Two corridors.

Q So on the 23rd, you were never told to lock in, is that correct?

A No. Miss Woolley told me that I was not a seg lock, that I was to remain in seg and I was not to be locked like the seg locks.

Q She specifically told you that, is that correct?

A Yes, she did.

Q On the 24th, you were out and then eventually told to lock in, is that correct?

A In the evening, yes.

Q At what time in the evening?

A 5 to 6.

Q Was that the first time you were told to lock in?

A Five to six, that was the first time.

Q What time did you ultimately go into your room?

A Just about 7 o'clock.

Q An hour later?

A Yes.

Q Did you see many correction officers coming down toward the seg room?

A Yes.

Q Was that the reason why you went into the room?

A No.

Q Oh, I see. You testified that you wanted a written statement?

A Yes.

Q Before you would go in, isn't that correct?

A Yes.

Q Yet when you saw all these correction officers coming down, you just walked in, is that correct?

A No. Miss Woolley came over herself to tell me, because I asked her to call over there --

Q What time did Miss Woolley come over?

A She came over approximately 6:45.

Q So it took you 20 minutes to walk -- how many feet is it?

A Excuse me. May I retract that? She came over a few minutes to 7.

Q What time?

A A few minutes to 7.

Q How many minutes to 7?

A About 6:55.

Q About 6:55. So it still took you ten minutes of conversation before you went back into your room?

A That's five minutes. Well, the officer --

Q Is that correct?

THE COURT: I will let her answer. She can tell what she was doing in the ten minutes.

A Miss Ambrosia CO took me in the interview room and talked to me and Lieutenant Guenther gave me my legal rights.

THE COURT: Gave you what?

THE WITNESS: My legal letter that Miss Jan Smith had brought up on the Friday.

Q I just want to refer you to one or two more things. There was mention of Diane Long. You testified that you slapped her or hit her, is that correct?

A Yes.

Q Do you recall a meeting of the inmate liaison committee shortly after that?

A Yes.

Q Do you recall a discussion at that meeting concerning you?

A I wasn't there. I had another meeting.

Q You weren't there, were you?

A I was there later.

Q When you came, was there a discussion concerning you? Were you asked questions?

A I don't know if there were discussion before I came.

Q I asked while you were there. Did you hear discussions concerning you?

A In the ten minutes I was there, yes.

Q Were questions posed to you concerning your conduct involving Diane Long?

A Yes.

Q Did you make a statement something to the effect that, "Well, if somebody gets in my way, I just go over them"?

A No.

Q You didn't make that statement?

A No.

MR. KANTOR: I'd like this series of documents marked for identification.

(Defendant's Exhibit F marked for identification.)

Q I show you now a memorandum from Mrs. Foster dated September 24, 1973, and ask if your perusal of this document refreshes your recollection as to what you said to the inmate liaison committee, particularly the second paragraph?

(Pause.)

Q Does that refresh your recollection?

A The date refreshes my memory, not the words.

Q Pardon me? Do you now remember saying that "You know how I am, when I make up my mind that I am going to do something, if you don't want to help me you should get out of my way because I will go over anyone to get it"?

A I never said those words.

Q Carol, you mentioned that you had been convicted of an assault. Will you tell me the nature of that one conviction?

A I never did discuss the nature of it. I just took the plea.

Q You knew what the charge was, didn't you?

A Yes, I knew what the charge was.

Q Wasn't the charge in fact that you assaulted correction officers at Rikers Island causing grevious injury to her?

A And also to m[illegible].

Q Excuse me?

A And also to me.

Q Weren't you in fact charged with assaulting--

A Yes, I was.

Q And you pleaded guilty to that?

A Yes.

Q Have you ever been convicted of any other crime besides the ones you are presently in for now?

A You say convicted of homicide?

THE COURT: Any other crime, he asked you.

THE WITNESS: Oh, yes.

Q What were they?

A (No response)

Q Let's see if I can help you. Were you sentenced in 1972 to a sentence of nine months at the New York City Correction Institution for Women for the criminal possession of dangerous drugs?

A Yes.

Q Were you ever convicted of any prior assaults?

A I never had done an assault.

Q Were you convicted in 1966 for unlawful possession of narcotic drugs?

A Yes.

Q Did you serve a term at Westfield Station Farm?

A 34 months.

Q How many months?

A 34 months.

Q Did that include the time you were on parole?

A I only had two months on parole.

Q Isn't it a point of fact that you were sentenced 9/13/66 and you were paroled 12/6/68? Isn't that a fact?

A Yes.

Q That is not 34 months, is it?

A I stayed there 34 months out of 36 months.

THE COURT: How old are you?

THE WITNESS: 27.

THE COURT: You are now 27?

THE WITNESS: Yes.

Q Carol, are you an expert in karate?

A No. I have no knowledge.

Q Are you an expert in any martial arts?

A No.

Q Just let me ask one or two generalized questions. Each time you went to the adjustment committee, you knew why you were going, didn't you?

A Every time I went they had a different report on me, so I had to keep asking why I was seeing them.

Q But didn't you know that you were going because

they were trying to determine whether or not you were ready to be released into the general population?

THE COURT: I don't know that the record shows that that is so as to each time, Mr. Kantor. We have been through all these and I think the time will come when you put the records of your adjustment committee in evidence. I suggest you shorten the hearing by going on to something else.

MR. KANTOR: I may go on to something else by stopping at this point, your Honor. I have no further questions.

THE COURT: Any redirect?

MR. LATIMER: Yes, your Honor. I have a couple of questions.

REDIRECT EXAMINATION

BY MR. LATIMER:

Q Carol, you stated both to me and to Mr. Kantor that you saw the adjustment committee on March 15th, right?

A Yes.

Q You also told me that at that time the adjustment committee told you that that was the referral from the superintendent's proceeding, isn't that correct?

A Yes.

Q They told you that at that time?

A Yes.

Q Let's go down a bit to the question of the day that you were supposed to be released from segregation. Wasn't that just really a question of the way you and Captain Woolley were calculating the days in terms of whether it was the 22nd or the 23rd?

A Yes, it was a difference between the hours of when I left.

Q When the report came back from Captain Woolley, the calculation for the 23rd, you didn't question that, did you?

A No.

Q Coming now to June 24th for a moment, there was a report written because you wouldn't volunteer for an assignment, is that right?

A Yes.

Q The assignment was washing dishes?

A CO told us it was an assignment as of today on her PM shift.

Q Washing dishes had always been something that the women on the block had volunteered for?

A All assignments is volunteer.

Q So that there is no requirement in segregation that you have to volunteer for any of those--

MR. KANTOR: Objection. It calls for a conclusion

on the part of the witness.

THE COURT: She can tell us what her understanding is.

A In all the times I have been going to seg with the three years, I never had to do an assignment in seg.

Q Any time that you did something like wash the halls or wash dishes --

A I did it on my own.

Q Have you always volunteered for that?

A On my own.

Q Had you ever been asked to volunteer for something like that and said "No, I don't want to do that tonight"?

A Yes, when I didn't feel good.

Q Had anybody before ever said anything to you about that?

A No.

Q Again, when you went into the adjustment committee on June 24th, were you notified in advance of --

A No.

Q When you walked into the adjustment committee room, were you given written notification of the charges?

A No.

Q The adjustment committee at that time imposed a penalty, is that right?

A Yes.

Q Did they do that in writing or did they do it orally?

A She did it orally.

Q On May 23rd, going back for a few moments to the interview with Captain Woolley and Lieutenant Cradle and Mr. Smith, you testified that Captain Woolley told you you were going to be a resident in segregation, right?

A Cradle told me I was going to be a resident. I stuck with Miss -- Captain Woolley.

Q You immediately asked her what it meant to be a resident in segregation, didn't you?

A Yes.

Q That was because you didn't understand what she was talking about, is that right?

A Right.

Q Did she explain it to you?

A She explained to me after I explained to her how my understanding of the resident was.

Q What did she explain to you was meant by a resident in segregation on May 23rd?

A To be locked in 24 hours and not seg locked.

Q To be locked in 24 hours?

A 24 hours in segregation house B area but not to be

locked in my room.

Q You were on that status until the evening of the 24th?

A Yes.

Q On the evening of the 24th, were you ever notified of any reason for the change in that status?

A No, I was not.

Q Were you ever given any written notification of the change in that status?

A No, I was not.

Q The inmate liaison committee, let's go back to that a moment, and the incident with Diane Long. You testified that that had to do with black solidarity.

A Yes.

Q Can you explain to the court and to everybody else here the importance of black solidarity to you?

A Black solidarity was a day that the inmates from New York, it is about 75 per cent of us from New York and the rest is from upstate, there is 100 women from upstairs and the remainder of us is from New York, and up in Bedford they don't have no type of programs relating to the New York women. So that means if -- upon release we don't have no jobs, we don't have anything in our favor, that relates to our neighborhoods.

Q Are New York women mostly black?

A Yes.

Q Go ahead.

A 247 precisely on that day.

Q Go ahead.

THE COURT: 247 are from New York City?

THE WITNESS: 247 black women.

THE COURT: Out of a total of how many?

THE WITNESS: There was 350 -- 320 at that particular time.

Q Explain to us what black solidarity is and what, if anything, occurred in the prison --

A Black solidarity related to families, inmates that didn't have -- during the process of being there a long time, their family wasn't able to visit them because they was on welfare, their kids couldn't come up to see them. On solidarity day the communities in New York City contributed free busing to bring our family up, entertainment, food, and so on, and also bringing up programs to help us to better ourselves instead of running back and forth from the institution, going out there with $40 and have to end right back up in jail again.

Q Is black solidarity day important to you?

A It was important because of what come behind. Not

behind. Not today. Dancing and eating, that wasn't important. It was important for us to do something while we was doing time, to make it valuable. Because we had no type of college class. Everybody had black history courses and they was giving it out like water at John Jay and Rikers Island. We couldn't get it up there. When we asked for college courses, they only gave us what they wanted to give us. Not anything that related to New York.

Q So it is a fair statement to say that you would do what you could in your power in the institution to make black solidarity day in the institution a meaningful day?

A The administration.

Q And that you would be upset if people put --

MR.KANTOR: Your Honor --

THE COURT: I think so, Mr. Kantor. I think it is getting a little far afield. As I understand it, there was not any punishment imposed for the remark that was made.

MR. LATIMER:: If in fact it was made.

THE COURT: Isn't that so?

MR. LATIMER: That is my understanding.

Q You testified that you were convicted of drug use. Can you tell us when the last time you used drugs was?

A I never used drugs. When I got busted the first

time, when I was 19 years old, I didn't know anything about jail. The only thing I ever been to that's criminal, I mean juvenile, and the ladies I had got busted with that was in the bullpen, they told me that I better say that I used some type of drugs otherwise I will have to go up there. The only way -- if I say I used something, I can get the article 9 and be out in 9 months.

MR. LATIMER: I have no further questions, your Honor.

THE COURT: Anything else for this witness? You may step down.

(Witness excused.)

THE COURT: Call your next witness.

MR. LATIMER: I have one more witness, Joyce Smith.

J O Y C E S M I T H, called as a witness, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. LATIMER:

Q Miss Smith, you are presently an inmate in Bedford Hills facility, is that right?

A Yes, I am.

Q Will you tell the court what the original charge was and when you are due to be released?

A Attempted burglary in the third degree, attempted robbery in the third degree, I am due to be released July 15th of this year.

Q Had you been let out on parole?

A Yes, I was, in December of 1972.

Q You are back in?

A On parole violation.

Q Have you ever been before the adjustment committee?

A Yes, I have.

Q Were you before the adjustment committee in April of 1974?

A Yes, I was.

Q Can you tell us what happened -- can you tell us what led up to your appearance before the adjustment committee?

MR. KANTOR: Objection on the grounds of relevance, your Honor.

THE COURT: Is it relevant to Miss Crooks' case?

MR. LATIMER: It is relevant to the practice of the adjustment committee.

THE COURT: Much of that practice, as I understand it, will have to fall by the wayside because of the June 26th decision of the Supreme Court. If you would like to make an offer of proof, I can rule on the relvancy. If you want to excuse the witness while you make the offer of proof, I

will take it inside.

MR. LATIMER: Okay, I would appreciate that.

(In the robing room.)

MR. LATIMER: This witness, Joyce Smith, would testify that she was involved in April, 1974, in a dispute with a correction officer about permission to go to the commissary, that this incident occurred on a Sunday. On Monday she was taken before the adjustment committee, she had no advance notice that she was going to the adjustment committee, no written charges were presented to her in advance of her appearance at the adjustment committee, the committee at that time was CO Hinckley, a Miss Jackson and a civilian whose name she doesn't recall, that when she walked in the door the charges were read to her for the first time. She asked to have her accuser present, the CO who brought her before the adjustment committee, present. That was refused. She was told it was not necessary. The adjustment committee already knew of her behavior. She was then awarded a week in segregation. She saw the adjustment committee a week later and was given another week in segregation and then she was released from segregation.

MR. KANTOR: I can't see how that is relevant to Carol Crooks.

THE COURT: I think it is relevant --

MR. KANTOR: If he wants to show a practice, it is conceded that may well be the practice.

THE COURT: It is relevant to this case in a sense. In a sense also it is merely cumulative. It permits the court to assess the credibility of the plaintiff by hearing of similar incidents affecting others within recent months. However, as I said to you gentlemen outside, all of this is regulated by the Wolff case. It is now ancient history. They won't be able to do it any more and it is not invalid as to when it was done because the Wolff case is not retroactive. If you are seriously disputing whether they gave advance notice of the charges in the prior hearings for Miss Crooks, then I suppose I should take the testimony to aid me in assessing the truthfulness of the plaintiff. But otherwise I would consider it cumulative and irrelevant.

MR. KANTOR: We are contesting it to the extent that when Miss Crooks was in -- each time she was with the adjustment committee, in point of fact she was told that she would have to be seen again within a week. Other than that, we are not protesting.

THE COURT: What they are saying in effect is that the practice was, as apparently it was noted in the Wolff case, to call people in before the adjustment bureau, read them the charges and then and there proceed with respect

to the charges, where the Wolff case says at least 24 hours prior notice is essential. The Wolff case also says it is not retroactive. I think it is cumulative and I think I would be perfectly justified in finding on this record that on the various occasions when Miss Crooks went before the committee on adjustment, they followed that procedure in her case.

MR. KANTOR: That's right. There is no question about it.

THE COURT: In that case I will decline to take the additional evidence solely on the ground it is merely cumulative and it pertains to a fact which is not disputed, not in issue.

MR. LATIMER: I am not quite sure exactly what is not disputed.

MR. KANTOR: It is not disputed that Carol Crooks was not given nor did she receive, prior to the adjustment committee meetings, written statement of notice of charges.

THE COURT: All right.

(In open court.)

THE COURT: Miss Smith, you are excused. You may step down.

(Witness excused.)

MR. LATIMER: That's the plaintiff's evidence, your

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Honor.

THE COURT: Plaintiff rests?

MR. LATIMER: Plaintiff rests.

THE COURT: I will be able to resume between 10:15 and 10:30 tomorrow.

MR. KANTOR: Will your Honor here motions at that time?

THE COURT: Only briefly. I'd like to make a complete record and then I will permit you to give me your summations at the end of the case.

MR.KANTOR: I just need to make one to preserve the record.

THE COURT: You may make that now.

MR. KANTOR: Pursuant to Rule 50 of the Federal Rules of Civil Procedure, I now move to dismiss the complaint on the grounds the plaintiff has failed to set forth a prima facie case.

THE COURT: If the plaintiff shows entitlement to any relief whatsoever, her complaint survives the motion, so I think she may very well show some entitlement to a declaratory judgment concerning her rights here, and without committing myself to any particular view of the case I will deny your motion at this time.

MR. LATIMER: At this time I would make a motion

for a judgment on the pleadings and on the evidence, and that she has made out a showing that her due process rights were violated under both Wolff v. McDonnell and the authorities that existed prior to the Supreme Court's decision. She had received no notice of the charges, she was not granted a full and fair hearing, she received no written dispositions of these charges subsequent to May 23rd.

THE COURT: Certainly the defendants have a right to be heard, so I will deny your motion at this time. All right, 10:15 or as close thereafter as I can get started.

MR. LATIMER: Your Honor, we still have the matter of Joyce Sanson.

THE COURT: I think you ought to make your statement for the record as to what the situation is in this regard. What is it that you believe you may have as rebuttal that you didn't know about at the time you consented that she be excused?

MR. LATIMER: Your Honor, it was an oversight on my part that I consented--

THE COURT: What is the scope of the oversight?

MR. LATIMER: The scope of the oversight was that I did look at a series of the writs, I saw many of the names that I didn't -- that I know that I didn't need that could very well be excused. If I did see Joyce Sanson's name--

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THE COURT: What is it you have to show by rebuttal by her testimony?

MR. LATIMER: Again, if the state brings up procedures in terms of, one, the counsel, if the state brings up procedures in terms of what happened on May 23rd and May 24th while Joyce was in segregation, she was an important witness in that respect and she again may be able to rebut --

THE COURT: If she hasn't already gone back, it might be better if she were kept available. However, I decline at this time to make a specific direction. As far as I can see, your right to counsel is limited to a situation where an illiterate inmate is involved or where the complexity of the issue makes it unlikely that the inmate will be able to collect and present the evidence necessary for an adequate comprehension of the case.

MR. LATIMER: It seems to me that in March that was a very relevant thing, under, again, authorities that existed prior to Wolff and also under Wolff.

THE COURT: But any punitive segregation imposed on your client in March has expired, hasn't it?

MR. LATIMER: I hope so, except for the fact that she is still there.

THE COURT: All right. I will see you all tomorrow

at 10:15.

(Adjourned to July 2, 1974, at 10:15 A.M.)

Carol Crooks

v. 74 Civil 2351

Janice Warne

New York, July 2, 1974
10:00 a.m.

- - -

(Trial resumed.)

- - -

(In open court.)

THE COURT: Mr. Kantor, you may go forward.

MR. KANTOR: May it please the Court, at this time I call the defendant Warne.

J A N I C E W A R N E, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KANTOR:

Q Mrs. Warne, by whom are you employed?

A I am employed by the Department of Correctional Services, New York State.

Q In what capacity are you employed?

A Superintendent.

Q Is that superintendent of facility?

A Superintendent of Bedford Hills Correctional Facility.

Q How long have you served in that position?

A Two years, April 23rd.

Q How long have you been employed by the Department of Correctional Services?

A 18 and a half years.

Q In that period have you served in numerous different positions?

A Yes, I have.

Q Would you just briefly tell the Court exactly what positions you have served in and for how long?

A Correcton officer, I can't remember, about three years.

Senior correction officer, about a year.

Supervisor, about three years.

Captain, assistant deputy, deputy, and I served as superintendent for four years permanent two years at Albion.

Q Except for the two years that you mentioned you spent at Albion, has all that time been at Bedford Hills?

A No. All that time was at Albion. Just the two years at Bedord Hills.

Q Would you describe for me the difference between a

medium facility correctional facility and a maximum facility correctional facility?

THE COURT: Is this in reference to New York State or what?

MR. KANTOR: Yes, in New York State.

A Bedford Hills is the only female correctional facility at the present time for sane women in New York State. Maximum security institution such as Attica have wall towers, solid walls around them, and there is built in controls. Bedford Hills is an open institution, with a chain link fence around the perimeter, and the movement within the facility is very free. All residents move on pass, unless they are in special housing.

Q What is special housing?

A Special housing is -- the institution, the superintendent must designate units in the facility as special housing, and we have special housing which we term as west wing --

THE COURT: As what?

THE WITNESS: West wing.

A (Continuing) There is one other unit that we term special housing only because the residents in that unit sometimes have limited access to programs, but generally they are included in all programs.

Q Are there different types of special housing?

A You mean within west wing? We have only west wing really for special housing, and we have had to house many different types of women there. I mean with different categories.

Q The people who are placed in special housing, are all those people in segregation or punitive segregation?

A No.

Q What other types of people are placed in special housing units at Bedford Hills?

A Those that have been seen by the Adjustment Committee and have been restrained for maybe a few days. We place -- we have had to place quarantine residents in special housing because of their overpopulation at the facility, protective custody women that have asked for protective custody have been placed in special housing. We sometimes have had to place furlough returnees in special housing, and those in discipline are placed in special housing.

THE COURT: Is there a difference between those you first mentioned as described as those seen by the Adjustment Committee and those who are in discipline?

THE WITNESS: Discipline are those who have been processed through superintendent's proceeding.

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Q I show you now Defendants' Exhibit A for identification and ask you if you prepared that document?

A No. Mrs. Woolley drew this.

Q Do you recognize what that purports to represent?

A Yes.

Q What is it?

A Building 111, west wing.

Q Is that the special housing unit?

A That is right.

Q Is that a fair and accurate representation of the special housing unit?

A Fairly.

MR. KANTOR: At this juncture I show it to counsel. I offer it in evidence.

MR. LATIMER: No objection.

THE COURT: It will be received in evidence.

(Defendants' Exhibit A was received in evidence.)

Q Could you explain to the Court exactly who is housed where in this facility?

THE COURT: You are asking that question with respect to the present time?

A At the present time, because of the increase in -- may I explain?

THE COURT: Certainly.

Q I asked you to.

A Because of the increase in our work release program, the work release, 111 has two wings, building 111 has two wings, an east wing and west wing. Our work release program is housed in the east wing and our special housing is in west wing. Because we plan to increase our work release program, we decided to partition off part of west wing so that this would open up into the east wing, you could walk right through the kitchen, and this unit over here is now housing work release women. We just increased our work release program considerably.

So work release has one wing of what used to be special housing and the special housing has the 15 rooms on this side and I believe 2 in here, plus the shower.

THE COURT: 15 on the left of that exhibit and 2 on the right?

THE WITNESS: I believe there are two on the right, with a partition, because we had to move it again, and the shower room is included in this. Work release now occupies this, though we did use it at one time for special housing, and this is now special housing over here.

Q Aside from the 15, 17 rooms thatyou have

mentioned in west wing, are there any other facilities currently available for housing inmates separate and apart from the general population?

A We just use the hospital building, but they do not have sanitary facilities, so you cannot use that -- in individual rooms, so you cannot use that for anyone that is going to give you a problem.

Q There was a mention made yesterday of an inmate Leslie Mason who was supposedly housed separate and apart from the population. Where was she housed?

A She was housed in the unit where work release is. At that time we had not used this for work release, and when they brought her there, we placed her there in quarantine, not knowing as to how the department wished to handle it.

Q What was the particular problem with Leslie? Why couldn't she be handled as any other--

THE COURT: We have had all that, haven't we, on the record? That is repetitious. The Court understands that she was believed to be a transsexual and it was considered inappropriate to house her with the general population. Haven't we already had all that evidence?

MR. KANTOR: Fine.

Q To your knowledge, Superintendent, is there

such a thing as a seg resident?

A No.

Q Is anybody how is housed in the west wing allowed out and about on the corridors in the rec room except during the one-hour exercise period?

A No. Not supposed to.

Q Superintendent, in the course of your duties, are you required to keep custody of certain records concerning inmates?

A Yes.

Q Is it the regular course of the duties of the institution to maintain those records?

A Yes.

Q Do you in fact maintain those records?

A Yes.

(Defendants' Exhibit G was marked for identification.)

Q I show you now Defendants' Exhibit G for idertification and ask if you have ever seen that before?

A Yes.

Q Where have you seen that before?

A In Carol Crooks ' service unit folder --

Q Would you describe to the Court what that is?

A In the facility there is one for the custodial

staff, there is a service unit folder that is maintained for all records in the facility. It is a central file.

Q That central file is kept in your custody?

A The central file is in the administration building.

Q Would you please describe for the Court what the document is that I have just handed you, which is Defendants' Exhibit G for identification?

A This is Carol Crooks' probationary investigation report.

Q Is that kept in her file?

A Yes.

Q Is it the regular course of business of the institution to keep that in her file?

A Yes.

MR. KANTOR: I have already shown counsel a copy of it. I offer it.

MR. LATIMER: I object as to relevance. This was a probation report or appears to be a probation report prepared for the purpose of sentencing after conviction. We are discussing certain due process violations that occurred May 23, 1974, almost two years after the date of this report.

THE COURT: I will take it subject to con-

nection. However, the Court understands, subject to correction, that the state treats these probation reports or presentence investigations in the same fashion as the federal system does, and that a copy of it is sent to the correctional institution to be used there. It is a point of beginning for the case workers dealing with the inmate and also for purposes of determining what programs or what special needs, if any, should be considered. That's one of the difficulties, which is nationwide. They use a single document for a two-fold purpose. Then, while I am sure it doesn't happen at Bedford Hills, in Danbury they allow prisoners to work in the office and the prisoners get ahold of the presentence report and they find out all the intimate details about the inmate and go tell it on the gallery. I am sure that doesn't happen in your place?

THE WITNESS: No.

MR. LATIMER: Still, we are talking about things that happened two years ago.

THE COURT: I will take it subject to connection. Objection overruled.

However, you may call it to my attention if it is differently than I suggest to you, if they make a different use of it up there.

xx

(Defendants' Exhibit G was received in evidence.)

THE COURT: I don't believe I will examine it myself until you connect it up with the case. I will take it subject to connection.

Q I show you now Defendants' Exhibit F for identification and ask you to examine it and then ask you if you have ever seen that or its original before.

THE COURT: Are you proceeding with records kept in the --

MR. KANTOR: These are all records kept in the ordinary course of business.

THE COURT: Why don't you show them to Mr. Latimer and perhaps you can have him stipulate that the witness would testify that these are from the records of the correctional facility at Bedford Hills, regularly kept in the course of business, and let's proceed.

What is the document?

MR. KANTOR: The document is a series of reports on Carol Crooks concerning the incident involving Diane Long on which Carol Crooks was cross examined yesterday.

MR. LATIMER: I would object to the introduction of this. Again, we are concerned with procedures

after May 23rd. The document was introduced yesterday for the purposes of probably impeaching the witness' testimony.

I fail to see the relevance of this.

THE COURT: I will take it subject to connection. You will have to connect it up. Same ruling. You don't question that all these are taken from the file and that they are genuine and kept in the regular course of business, do you?

MR. LATIMER: No, I wouldn't question that.

(Defendants' Exhibit F was received in evidence.)

MR. LATIMER: May I have a brief voir dire with the witness?

THE COURT: Going to whether they were kept in the regular course of business?

MR. LATIMER: And her knowledge of the documents.

THE COURT: She hasn't testified to any knowledge, as I understand it, other than the fact that they came through the records and files concerning Miss Crooks and they are regularly kept in the course of business. I will let Mr. Kantor take the 15 or 20 minutes he apparently wants to take to ask her. It seems obvious to me they cameout of the prison files.

MR. KANTOR: It is obvious to me.

THE COURT: Yes, but we have to move this case along. We can't waste time with the obvious. Do you want to hear him ask those questions?

MR. LATIMER: No.

THE COURT: I am assuming they are not offered for the truth of the mateiral therein contained.

MR. KANTOR: Not yet.

THE COURT: All right.

They are taken subject to connection.

xx (Defendants' Exhibit H was marked for identification.)

BY MR. KANTOR:

Q I show you now Defendants' Exhibit H for identification which consists of the letter dated June 24, 1974 to Commissioner Peter Preiser. Did you write that letter?

Attached to that letter is another sheet. Would you describe for the Court what that sheet is?

A The superintendent's action on review of Adjustment Committee reports.

Q Does that refer to any specific reports?

A Those the Adjustment Committee maintained for interviews with Carol Crooks.

Q In the course of writing that letter -- did you write the report?

A Yes.

Q In the course of writing the letter and making that report, did you have occasion to review the Adjustment Committee proceedings concerning Carol Crooks?

A Yes.

MR. LATIMER: Your Honor, I believe the report itself is already in evidence.

MR. KANTOR: Fine.

I just want the covering letter in as well.

THE COURT: All of these exhibits I have taken subject to connection, and I assume counsel is attempting to do so. That's why I haven't stopped him.

MR. LATIMER: Mr. Kantor, Plaintiff's Exhibit 5 is the report annexed to that letter, is that correct?

MR. KANTOR: That is correct.

(Defendants' Exhibits B, C, D and E were received in evidence.)

Q I show you now Defendants' Exhibit B in evidence and ask whether or not that was one of the reports you reviewed in the course of writing that letter and making the report to the Commissioner?

A Yes -- no. This one was not. It was prior to

this. This one came up -- they hadn't had a chance to get this -- I knew about this but I didn't have the chance to review the report.

THE COURT: Which number is that?

MR. KANTOR: Defendants' Exhibit B.

THE WITNESS: I had read the reports but not that Adjustment Committee report.

Q You did, however, review various --

A I knew about the incident.

Q How did it come about that you wrote that particular letter to Commissioner Preiser?

A Chapters 5 and 6 state that the superintendent reviews the Adjustment Committee -- their actions if the resident is kept in special housing over 30 days.

Q Could you show the Court where that is?

MR. LATIMER: Counsel, while Mrs. Warne is looking through the regulations, may I see the letter?

THE COURT: What is the open question?

MR. KANTOR: I am asking her to point to the particular regulation which states that she must review the Adjustment Committee report --

THE COURT: If you are familiar with what number it is, you can call the Court's attention to it. The regulations are before the Court.

THE WITNESS: Review decision actions, 270.1. 270.2, I believe.

(Defendants' Exhibits I and J were marked for identification.)

(Defendants' Exhibit K was marked for identification.)

(Defendants' Exhibit L was marked for identification.)

(Defenants' Exhibit M was marked for identification.)

MR. KANTOR: At this juncture, your Honor, I'd like to offer Defendants' Exhibit H for identification in evidence.

MR. LATIMER: No objection.

(Defendants' Exhibit H was received in evidence.)

Q I show you now Defendants' Exhibits I, J, K, L and M for identification and ask you if these are the reports that you reviewed in writing Defendants' Exhibit H?

A Yes.

Q Did you review any additional reports?

A Pardon?

Q Aside from the ones I have just shown you, did you review any additional reports?

A I believe there were some more. These two are the same.

MR. KANTOR: I note for the Court my apologies. I had erroneously given two copies of Defendants' Exhibit I, and they are marked Defendants' Exhibits I and J.

THE COURT: The record may be corrected. Hand them to the clerk. Mark them correctly.

THE WITNESS: I believe there were more.

MR. KANTOR: At this juncture, your Honor, I'd like to offer in evidence Defendants' Exhibits I, K, L and M.

MR. LATIMER: M has already been marked as Plaintiff's Exhibit 4 for identification.

MR. KANTOR: Is it in evidence?

MR. LATIMER: No, it is marked for identification.

MR. LATIMER: No objection.

(Defendants' Exhibit I, K, L and M were received in evidence.)

Q Superintendent Warne, were you on duty on February 3, 1974?

A No.

Q Did you subsequently learn and if so where, when and under what circumstances the occurrences on February 3, 1974?

A Yes.

Q How, where, did you learn them?

A I learned it immeidately on my return to the facility, verbally and by reviewing reports.

Q Did you have occasion to talk to any of the officers involved in the incident of February 3, 1974?

A Yes.

Q Did you have occasion to speak with the four officers assaulted on February 3, 1974?

A Not all of them, no. I had spoken to two specifically and one just quickly.

Q Who are the two officers thatyou spoke to specifically?

A Mrs. Roggy and Mrs. Ansty.

Q Were they on duty continuously from February 3, 1974 to this date?

A No. Mrs. Roggy was off on compensation, returned to work and then had to go back out again. Mrs. Ansty has not returned to work as yet.

MR. LATIMER: Objection. I again don't see the relevance.

THE COURT: I will permit the witness to state or describe the investigation she made, if any, but not to give the conversations.

Q Did you conduct a superintendent's proceeding on

March 8, 1974?

A No.

Q Did you have occasion to review that superintendent's proceeding?

A Yes.

Q Did you in fact review it?

A Yes.

Q Did you approve the resolution of the superintendent's proceeding?

A Yes.

MR. KANTOR: I have no further questions at this time.

THE COURT: I think it wouldbe helpful to the Court if the witness would advise the procedures are which are being followed in this institution, as she understands them to be, the procedures followed when someone is placed in punitive segregation and the procedures followed, if any, when someone is placed in segregation other than punitive. I take it that youdo have both those categories of segregation, from your prior testimony, is that right?

THE WITNESS: Yes.

THE COURT: Please tell us what you understand to be the procedures.

THE WITNESS: We are under the departmental

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rules, we follow Chapters 5 and 6, implementation of standards of behavior. The Adjustment Committee, according to Chapter 5, are to try to -- through counselling and procedures available for them, to change attitudes of the inmate within the facility in order that they abide by the rules and regulations of the department and of the facility. The superintendent's proceedings are a disciplinary process.

THE COURT: Would you take it step by step and tell me what happens or by what procedure or method the Adjustment Committee confines someone to seven days punitive segregation?

THE WITNESS: The Adjustment Committee does not place someone in punitive segregation. They can withdraw privileges and may place them in segregation to change attitudes and through counselling.

Punitive segregation is through the superintendent's proceedings.

Q Can you explain to the Court what the distinction is between punitive segregation and segregation for counselling?

A Punitive segregation is a very severe or very serious disciplinary occurrence within the facility, affecting the security of the facility.

THE COURT: Here we had testimony before that the plaintiff had placed a cloth over her window. Do you remember that yesterday?

THE WITNESS: Yes.

THE COURT: And was confined for five or seven days as a result of that. Isn't that so?

THE WITNESS: I don't believe she was confined. She was in segregation, and according to the rules and regulations of the department, we are to observe the residents at all times, and this is in violation of the rules. But I don't believe that she was given additional time for that.

THE COURT: It was concurrent time, but it is still punitive segregation, is it not?

THE WITNESS: She was at that time under the superintendent's proceedings. It was a matter of handling the infraction.

THE COURT: The Court also understands that on one occasion she was involved in dissembling the bed and breaking some windows. What was the procedure and the result followed in that connection?

THE WITNESS: She was removed to a more secure observation, the mental observation rooms, which are more secure than segregation rooms, and actually there was no --

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the time was just included right in 60 days. No additional time was --

THE COURT: This is not regarded as an incident which warrants and results in punitive action?

THE WITNESS: It should be, yes. It was felt that the superintendent's proceedings would handle the total incident.

THE COURT: What are the proceedings followed, assuming today that a person at your institution dissembles the bed and breaks the window and does so wilfully and intending to disrupt, what is the procedure followed with respect to that case? That's what the Court is trying to ascertain here.

THE WITNESS: You mean if she were locked in segregation and she took a bed apart?

THE COURT: Let us take an ordinary person who is an inmate at the institution, who wilfully dissembles the bed and breaks the window, intending thereby to create difficulty or disruption.

THE WITNESS: She would be placed in another room, maybe a room without furniture.

THE COURT: How would this --

THE WITNESS: Until she quiets down.

THE COURT: How would this result be achieved or how

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would this go procedurely?

THE WITNESS: You mean to be moved from one room to the other?

THE COURT: I have given you a hypothetical situation where one of the persons in your charge wilfully dissembles the bed and breaks the window.

You may assume any similar conduct of a disruptive nature which violates the order of the institution. What is the procedure followed in that case?

THE WITNESS: She would be removed from that room and probably placed in another room without furniture with the number of staff necessary to do this.

MR. LATIMER: Excuse me, your Honor, can the witness please speak up?

THE COURT: Yes. I will have to tell you, I told everybody in this case, please speak up nice and loud.

THE WITNESS: I guess I am directing my voice this way.

THE COURT: It is not clear to the Court, perhaps I haven't asked the question correctly, I want to find out what procedures are followed, and I'd like you to extend the hypothesis a little further. The person involved indicates that the window is broken accidently, that somebody else dissembled the bed, let's say.

THE WITNESS: It would be impossible for someone else to dissemble the bed or break the window because that's the only person in the room.

THE COURT: Do you have any further direct testimony?

MR. KANTOR: Two or three more questions.

BY MR. KANTOR:

Q Could you explain to the Court how, in what way, does the Adjustment Committee attempt to counsel or deal with an inmate who is causing a problem?

A They will spend -- in fact they spend a great deal of time with many of the residents in discussing and trying to find out what seems to be the problem, and in counselling.

Q Suppose, then, an inmate was, let us say, with a charge sheet, accused of being out of bounds or accused of being continually late for school, let's say, and the inmate in the course of this meeting denies that she was either out of bounds or continually late for school. What would happen then?

A I would hope that they would have investigated and had some type of reports to substantiate the charge or the report, the infraction.

Q Would that be before or after the inmate denies

involvement?

MR. LATIMER: I didn't hear the question.

A It would be after.

MR. LATIMER: I didn't hear the question.

(Record read.)

THE WITNESS: The reports would be submitted along with the infraction.

Q Are the goals of the Adjustment Committee, when it deals with an inmate infraction and the superintendent's proceeding when it deals with an inmate's infraction different?

A Yes.

Q How do they differ?

A Well, the goals of the Adjustment Committee, as I understand them, are to change the attitudes of the person involved and to bring him around to realizing the need for following the standards as set by the department in the institution. The superintendent's proceedings is actually a disciplinary proceedings.

THE COURT: The Adjustment Committee is not disciplinary in your view?

THE WITNESS: It is my understanding, and if it is functioning properly, it is also a counselling unit. That is why they have the three people on it, and that

they are to discuss with the inmate what she has done, try to determine why, and see if there is some way of referring her or problem solving or referring her to mental hygiene.

THE COURT: Here I have Exhibit L. It says on there, with reference to this plaintiff, that on May 24th she refused to go in her room and she was denied exercise period and shower, and because her explanation and attitude was deemed good, her exercise period and shower were restored. You don't regard that as punitive?

THE WITNESS: In writing that on there, if someone refuses to go in their room, they try to wait and find out if they are going to have this problem again, and they would not -- should not really have probably placed that on there. That would be just a matter of whether -- when the person is ready to go out again, then they determine that.

THE COURT: But you don't regard confining somebody on an Adjustment Committee proceeding for having committed an infraction, such as failing to go to the room or breaking a window or dissembling a bed or being out of bounds in mowing the grass, or any number of matters which you could presuppose, you don't regard that as punitive?

THE WITNESS: They under these chapters are

supposed to try to have the resident then become determined not to do this again. In each instance it is done individually, and there is no -- within a structure, there is no set decision as to what they do. Sometimes they reprimand them.

If it is a continuation, then it has to be more severe.

MR. KANTOR: I have no further questions.

THE COURT: You may cross examine.

MR.LATIMER: Your Honor, at this time I would move to strike from evidence the exhibits offered on the grounds they haven't been connected up to anything.

THE COURT: I will hear you, Mr. Kantor. I don't know that he has finished his case. Do you wish to be heard?

MR. KANTOR: Your Honor, I haven't finished my case yet.

THE COURT: All right, you have a reserved motion to strike.

CROSS EXAMINATION

BY MR.LATIMER:

Q Mrs. Warne, you have been a correction -- with the Correction Department for, you testified, 18-1/2 years?

A Yes.

Q Before September 30, 1970 was there such a thing as an Adjustment Committee?

A No.

Q In your experience with the Department of Correction, had you ever sat on any Adjustment Committee?

A No, I haven't. May I add that I have conducted what used to be termed as seg court, which would have been the former proceedings that was acceptable within the department.

THE COURT: The Court has enough trouble with the present proceedings. Let us not go into the former proceedings.

MR. LATIMER: I dont want to go into the former proceedings, your Honor.

THE COURT: They are passe.

Q Are there internal rules or procedures within Bedford Hills, I am not talking about the department's rules and regulations, but within the institution itself, for the conduct of the Adjustment Committee, for the assignment of personnel to the Adjustment Committee, and so on? Do you have your own internal rules and regulations?

A The Adjustment Committee abides by the Chapters 5 and 6.

Q Those chapters are applicable to all the

correctional facilities within the state?

A That's right.

Q What I am asking you now is if you have your own internal procedures.

THE COURT: You mean written rules, now?

A No.

Q Written rules and regulations or oral policies that --

THE COURT: Take them one at a time. First you ask about the written rules.

A I have no written rules, no.

Q For the conduct of the Adjustment Committees?

A No.

Q Do you have any rules with regard to when the Adjustment Committee meets?

A When there is a need. Generally it meets every day.

Q The Adjustment Committee meets every day?

A Because there seems to be a need.

Q Do youhave any written directives assigning as to which personnel within the institution are to be assigned to the Adjustment Committee? I am talking about employees, not, of course, inmates?

A Yes. We have a lieutenant item for this

committee, and each of the lieutenants have had a period of time where they have worked on the committee for their own so to speak information, so that they know how to operate the committee. It is necessary to have one civilian employee, so we assign each day to one area of the civilian staff, such as one day for school, one day for service unit, to sit on the committee.

Q Are these policies in writing?

A The civilian staff is, but the lieutenants, there will be one assigned specifically.

Q Just how do you decide who is to sit on the Adjustment Committee, who is to serve on the Adjustment Committee and for how long a person is to serve?

THE COURT: Would that be relevant?

THE WITNESS: I don't understand.

Q Let me ask you this. How long a term does a correction officer, a lieutenant or captain or whatever, serve on the Adjustment Committee within any given block of time? One month? Six months? Three months? Does it change on a day-to-day basis?

A Well, the training period were to last one month for each one of them, of the lieutenants, and then there will be a permanent one appointed. I think we have completed the training, I am not sure, I have to discuss that

with Miss Clement, I believe the lieutenants have been all trained now.

Q Let us take a hypothetical and let us say that Captain Woolley was appointed to the Adjustment Committee. She has completed the training program. I am sure she has. She is appointed to the Adjustment Committee. What is her term on the Adjustment Committee? How long does she sit? Does it change on a daily basis? This is what I am trying to get at.

A No, it has been through training, and, don't forget, that when people bid into jobs with the union contract, then they leave the Adjustment Committee, so that there will always be changes. I can't say when there will be a change again.

Q How is it determined? If you were holding an Adjustment Committee gain tomorrow --

THE COURT: I am puzzled by the thrust of these questions. As I understand it is regulated by 252-1C. I take it that the superintendent could put anybody on the committee and then tomorrow morning could put someone else on and could do it entirely by arbitrary selection, just the same way this Court could assign a deputy to sit here in the morning. Are you trying to show something here?

MR. LATIMER: Yes, I am.

THE COURT: What are you offering to show?

MR. LATIMER: There are instances where an officer who made a disciplinary infraction against an inmate sat on the Adjustment Committee that reviewed that infraction, and I am trying to determine just how that decision was made, whether it was something --

THE COURT: That is out starting June 26th, so I wouldn't worry about that one. They can't do it any more.

MR. LATIMER: I will introduce other documents to show that they did it to plaintiff.

THE COURT: Before June 26th?

MR. LATIMER: Before June 26th.

THE COURT: You don't dispute that, do you, Mr. Kantor?

MR. KANTOR: I'd like to see it. It sounds quite unusual.

THE COURT: Show it, then, so the record will be complete.

MR. LATIMER: I wasn't planning to introduce those documents with this witness, your Honor.

THE COURT: Let us proceed. How she designates people is irrelevant. She has the right under the rules,

subject only to the recent pronouncement of the Supreme Court. She can put people on the job completely arbitrarily.

Q Under the rules and regulations, the Adjustment Committee has the power to order an inmate confined in the segregation unit for seven days, is that correct?

A Yes.

Q Under the same regulations --

A Up to 30 days.

Q But she has to be reviewed every seven days?

A No --

THE COURT: I can't hear you. Please speak up.

A I am not clear of that myself. I believe so.

Q But, in any event, the Adjustment Committee under its procedures can confine a person for 30 days?

A Yes.

Q And under a superintendent's proceeding an inmate could be confined for up to 60 days?

A And then they may refer it back to the Adjustment Committee. The Adjustment Committee may confine over 30 days, but then the superintendent has to review.

THE COURT: Are you including in these answers confinement pending a hearing? Do youhave such circum-

stances where someone is confined immediately following an incident and a hearing is scheduled two or three days later?

THE WITNESS: Then that time should be included in the total time.

Q When a person is confined in segregation by virtue of a superintendent's proceeding, is there any difference at all in the conditions, in the physical conditions of that confinement; from when she is confined by virtue of an Adjustment Committee proceeding?

A No.

Q So that the physical aspects of the confinement are identical in both the superintendent's proceeding and the Adjustment Committee proceeding?

A Yes.

Q That is she is supposed to be locked in 23 hours a day, she has the hour exercise, and is given, I believe, a shower?

A Yes.

THE COURT: How about the conditions of someone who is confined for reasons other than punitive, segregated for reasons other than punitive?

THE WITNESS: No, there is no difference, because we have had women that have asked to be -- protective

custody, and they have the one standard.

THE COURT: You mentioned earlier, quarantine and furlough returnees.

THE WITNESS: Quarantine would be completely confined, as quaranteen is, and furlough returnees are only overnight. They are just over the night and then they go out the next morning.

Q Was Leslie Mason locked in her cell 23 hours a day?

A I don't believe -- I don'tknow. She was supposed to have been in quarantine.

Q She wasn't being punished?

A Pardon?

Q Was she being punished?

A No. She was in quarantine. I received her and was advised to hold her until a determination had been made. So we placed her in quarantine and she went through the reception unit procedures, the same as any other inmate, only in different places.

Q Is there such a thing in Bedford Hills as administrative segregation, that is segregation for reasons other than punitive?

A We have never had one until this time.

THE COURT: Until when?

THE WITNESS: Until now. It is not administrative segregation either.

Q What is it called?

A An adjustment --

THE COURT: I am sorry, I don't understand your answer.

THE WITNESS: WE are able to remain in an adjustment segregation, I don't like to use the word segregation, but in special housing.

Q What is the difference in the physical conditions of confinement between adjustment segregation and segregation in the west wing?

A There will be no difference, with the exception that school -- if you mean with Carol --

Q I am talking about in general.

A There has never been one. We never had one.

THE COURT: Do I understand, is it your contention that this plaintiff is in adjustment segregation rather than punitive?

THE WITNESS: That's right.

THE COURT: Is it segregation based upon objective conduct or misconduct?

THE WITNESS: Yes.

THE COURT: That's why she is in segregation,

isn't it? Because she did something wrongful and the committee anticipates, rightlyor wrongly, that if released into the general population, she might do something wrongful again?

THE WITNESS: That's right.

THE COURT: That is all this case is about, isn't it?

THE WITNESS: That is right.

Q Do you review all Adjustment Committee reports?

A No.

Q Once the Adjustment Committee files its reports, does anybody review it?

A The deputy superintendent.

Q So that they are reviewed by somebody in the administration? All of them?

A Yes.

Q The Adjustment Committee procedures, you have heard yesterday some testimony about what some of the people have gone through. When a person is called to the Adjustment Committee, how much advance notice, if any, do they receive?

A None,with the exception of Carol. Carol knows that she meets it every seven days.

MR. LATIMER: I move to strike that last part

of the answer as to what Carol knows.

THE COURT: It is not responsive, and I will strike it. However, do I gather correctly that the basic finding on which she has been continued is a finding that there has been no change of attitude and no remorse and no willingness to adhere to proper standards of conduct, if released? Is that right?

THE WITNESS: Yes.

THE COURT: That's a factual determination, isn't it? Do you so regard it?

THE WITNESS: Yes.

THE COURT: If you interviewed her and believed or if the Adjustment Committee interviewed her and believed that she really intended to refrain from any disruptive conduct, they would terminate her adjustment period, isn't that right?

THE WITNESS: Yes.

THE COURT: So they are really making a factual finding, aren't they?

THE WITNESS: Yes.

THE COURT: Do you envision that you come to a point in time where you cannot continue to make such a finding?

THE WITNESS: I would hope that that time would have come by now.

THE COURT:No. What I mean to say is, am I correct in assuming that you believe the Adjustment Committee, under these regulations, has the power to determine at the end of each seven-day period for the balance of the 15 years that the finding which they made in one of these exhibits -- I want to make sure I refer to the correct one -- I am referring to Exhibit H or the report attached to it which I understand is also Exhibit 4, where they have reached a conclusion that she has not developed any genuine intention to cooperate, in view of her past serious history of poor adjustment, attempted physical intimidation of all concerned and actual physical assaults on staff Do you contend that under these rules and regulations as interpreted that if they held weekly hearings and reached that same conclusion each week, that they could continue this type of segregation for the balance of her term of imprisonment?

THE WITNESS: No, I don't believe it could be continued that long. I don't think it would be beneficial for anyone.

THE COURT: We are talking in terms of power now rather than judgment or discretion. Is it your consideration under these rules that you are working with every day that the Adjustment Committee would have the power,

assuming the state of facts I have asked you?

THE WITNESS: No, because I'd have to review them and the Commissioner has to review my review.

THE COURT: All right.

BY MR. LATIMER:

Q Would the prisoner receive notice of the review before the review?

A No.

THE COURT: You are talking about a superintendent's review?

Q Either or both.

A No. She would receive a copy of the review.

Q After the review has already been accomplished?

A Yes.

THE COURT: She gets notice of the Commissioner's, doesn't she?

THE WITNESS: She gets a notice of the Commissioner's review and she gets a notice of my review.

Q After the review has already been held?

A Yes.

THE COURT: Is that so, Mr. Latimer?

THE WITNESS: The Commissioner has not reviewed my review yet, he has not responded as yet.

THE COURT: I don't so read the regulations,

but I can't put my finger on the particular portion of it at this time, and I don't want to delay the hearing, so please go forward.

MR.LATIMER: I am just trying to determine that --

THE COURT: The Court understands that the inmate could seek a review from the superintendent and also from the Commissioner.

MR. LATIMER: That's not what I am getting at.

THE COURT: You asked whether the person affected would receive advance notice of the proceedings, and I assume anyone requesting the proceedings would thereby have advance notice of them because he or she initiated them. Isn't that so?

MR. LATIMER: No. Review -- the superintendent's review is automatic. It doesn't have to be requested by the inmate.

Q Is that right?

A Yes.

Q The same thing with the Commissioner, at the end of a given time you have to have the proceedings reviewed by the Commissioner.

A That is right.

THE COURT: May not the inmate initiate review at her own motion?

THE WITNESS: Yes.

THE COURT: Let us proceed.

Q When you initiate the review, is the inmate given a chance to again present her side of the story or is it --

A Yes. It says right there on the form that she may contact the Commissioner regarding it.

Q On Plaintiff's Exhibit 5, isn't that -- you talk about attempted physical intimidation of all concerned. I would ask you at this point when?

A When what?

Q When this attempted physical intimidation that you are talking about -- I am a little bit puzzled by the report because --

MR. KANTOR: If counsel wishes to testify --

THE COURT: Yes. What I am trying to try here is the procedures. I can't go into the ultimate underlying facts, except to find out whether they had reasonable cause to believe that they were proceeding in good faith.

MR. LATIMER: That goes to the question of arbitrariness, and that's what I am trying to determine. Let me go back for a moment.

Q Going back to an Adjustment Committee proceeding, you have already testified that the inmate does not receive

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advance notice of the proceeding.

A Yes.

Q Yes she does not?

THE COURT: That's abundantly clear on this record. Let us go on to something that's in dispute.

Q She doesn't --

THE COURT: Please, let us go on to something else. She walks into the meeting and they charge her. That's the first time that she has notice of the charges?

A Yes.

Q Do they give her a written copy of the disposition of the charges?

A No.

MR. KANTOR: Objection, move to strike on the grounds of relevance.

THE COURT: It may be relevant.

MR. LATIMER: Under Wolff v. McDonnell --

THE COURT: Please don't argue.

MR. KANTOR: Wolff v. McDonnell --

THE COURT: Gentlemen, please don't discuss it with each other. If you have matters you wish to raise, address the court.

Q Have you ever discussed an Adjustment Committee matter with the Adjustment Committee at a time prior to the

committee's meeting?

A No, I do not get involved with the Adjustment Committee, if you are referring to the day that --

Q I am not referring to any specific day. When I refer to a day -- Carol saw the Adjustment Committee on March 15th, is that right?

A Yes.

Q And she saw the Adjustment Committee again on May 23rd?

A Yes.

Q How many superintendent's proceedings have you conducted since you have been a superintendent or have you been authorized to conduct since you have been a superintendent of the institution?

A I am authorized to conduct all superintendent's proceedings.

Q How many have you had?

A I do not conduct superintendent's proceedings.

Q How many superintendent's proceedings have there been since you have been a superintendent of the institution?

A I couldn't say.

Q Does each and every one of those proceedings result in a referral to the Adjustment Committee?

A No. Only serious ones.

Q Would you say 50 per cent result in a referral to the Adjustment Committee?

A I do not believe so. I believe only very few.

Q So that referral to the Adjustment Committee as partof the disposition of a superintendent's proceeding is not the normal practice at the institution, is that right?

A True.

Q Carold was referred to the Adjustment Committee, that's not in dispute, we have that on the record, and that Adjustment Committee met when?

A The 23rd.

Q Isn't it true that that Adjustment Committee met on March 15th and she was given a week concurrent?

A No.

Q Did you review the proceedings of the March 15th Adjustment Committee?

A I have.

Q When did you review them?

A When I was doing the total record.

Q But you didn't review them within the immediate period thereafter?

A No.

Q On May 23rd you knew that Carol was going to see the Adjustment Committee on the 23rd?

A Yes.

Q And that Adjustment Committee consisted of Captain Woolley, Mr. Smith and Lieutenant Cradle, is that right?

A Yes.

Q Did you have any conversation with any of those three people before Carol met with the committee?

A Yes.

Q Can you tell us the terms and substance of that conversation and with whom it was?

A It was with Lieutenant Creadles and Captain Woolley and we discussed purely procedures.

Q Can you tell us what you discussed?

A Procedures.

Q What procedures?

A According to Chapters 5 and 6.

Q Can you tell me what you said to Captain Woolley and Lieutenant Cradle and what they said to you?

A No. I had wished to clarify procedures with Albany, which I did, and I explained that to them.

Q Tell me, if you can remember, verbatim, what the conversation was?

THE COURT: The substance of the conversation,

not verbatim. Tell us the substance of what you said to them and what if anything they said to you concerning this matter.

A That they would have to review every seven days, that they should determine, you know, discuss the situation.

Q That they should review every seven days. So you had assumed that Carol would remain in segregation at that time?

A No, no. It says in there that they have to be reviewed in seven days.

Q In any case?

A That is right. That's what it says here.

Q No matter what the disposition is?

A That's right. What their disposition is, they will have to see her again in seven days.

Q If all she was given on May 23 was a reprimand, would they have to see her in 7 days?

A They would see her in 7 days.

Q If all that had happened on May 23 when the 60 days sentence with the superintendent's proceeding, that portion of the sentence, had expired, was a reprimand, if she had walked into the Adjustment Committee and they said "Well, we are going to give you a reprimand," and let her back in the

general population, would she then have had to be reviewed by the Adjustment Committee in seven days?

A I believe that would have terminated the Adjustment Committee's responsibility. If she were returned to the population.

Q So that in your discussion prior to the Adjustment Committee meeting where you said reviewed the procedures and said she would have to be reviewed again in seven days, you were assuming that she would continue in segregation, isn't that right?

A They were to interview her and then they were to determine if she would. If she was, then she would have to be reviewed in seven days.

Q Isn't it possible -- I will withdraw the question. Have you ever issued any guidance to an Adjustment Committee as to action that the committee might take in a given case before the Adjustment Committee met with respect to that case?

A I would onlpy if there is a procedure that had never been used before.

Q Such as housing a person in segregation?

MR. KANTOR: Objection. The question has already been asked and answered.

THE COURT: He may ask the question.

Q Such as housing a person in segregation but not requiring her to lock in?

A I had never spoken to anybody regarding that.

Q When you spoke with Captain Woolley and Lieutenant Cradle, did they ever express any opinions about Carol, her attitude and her behavior?

THE COURT: You ought to fix a time for us.

Q Between March 8th and May 23rd.

A Many people have spoken to me about --

Q I am talking specifically about Captain Woolley, now, and Lieutenant Cradle, at the time before the May 23 Adjustment Committee.

MR.KANTOR: If your Honor pleases, this is going way beyond the scope of the direct examination.

THE COURT: It is getting close to being beyond the scope. I think you ought to make an offer of proof. I will permit this question to be answered yes or no. Did they speak to you about her attitude or about her case?

A Not Lieutenant Cradle, but -- that I can remember. Captain Woolley has spoken to me about -- had discussed what had happened on the February 3rd incident.

A Did she indicate any attitude toward Carol, any opinion of Carol as a person or as an inmate at that

time?

A I will say she expressed the fact that inmates had conveyed the impression that they were afraid of her.

Q Did she indicate her own attitude toward Carol?

A No.

Q The same question with Lieutnenat Cradle.

A I don't remember discussing Carol with Lieutenant Cradle.

Q Did you discuss Carol, and this will be now any time after March 8th, with Lieutenant Waterman or Lieutenant Guenther?

A I don't believe so. I am not sure. But I don't believe so.

Q In Plaintiffs Exhibit 5, it states that Carol has been relatively incident free during the time in segregation. I would ask you nowwhat else you expect her to do to demonstrate her adjustment.

MR. KANTOR: Objection.

THE COURT: Sustained.

Q I will show you this copy of the answer in the case and ask if you have seen that document before.

A No, I haven't seen the document.

Q Youhaven't seen the answer?

A I haven't ever seen the charges.

THE COURT: By charges you mean the complaint?

THE WITNESS The complaint, yes.

Q Did you discuss the preparation of this answer with Mr. Kantor?

A Yes.

Q To your knowledge, the answer --

MR. KANTOR: I object. At this point counsel is inquiring into priviledged matters.

THE COURT: I am not sure whether he is or not or whether he is simply attempting to impeach the testimony given on direct.

Q To your knowledge, the answer was prepared by Mr. Kantor based upon information that you gave to him?

THE COURT: I don't know how she would know that. She doesn't know how many people Mr. Kantor talked to.

Q In paragraph 11 of this answer, the document states that the purpose of the May 23 meeting was to determine "whether plaintiff had yet evinced a sincere desire to conduct herself in accordance with the rules of the facility."

There was a determination made as to that, was there not, on May 23?

A Would you read that again?

Q The May 23 meeting, the Adjustment Committee

meeting, the purpose, this is in the answer that was filed with the Court, "The purpose of the meeting was to determine whether plaintiff had yet evinced a sincere desire to conduct herself in accordance with the rules of the facility."

Is that a fair statement of the purpose of that meeting?

A I'd say so.

Q Was a determination made on May 23?

MR. KANTOR: Objection. At this point counsel is going again way beyond the scope of direct examination.

THE COURT: It is sort of repetitious. We all know a determination was made. The document reflecting the determination is in evidence. You don't have any doubt, any of you, that the answer is yes, they did make a determination. Let us go on to something else.

Q You stated on direct examination that you spoke to several officers with respect to the February 3, 1974 incident.

A I said I spoke to two officers that had been injured.

Q Did you speak to other officers with respect to that incident?

A I spoke to supervisors.

Q Can you tell us who those people were, the names?

A Well, the officers were Mrs. Roggy, I have already said that, Mrs. Ansty, and I have spoken to Miss Clement and Mrs. Woolley, Sargeant Carter, Lieutenant Guenther. I can't state everybody that I discussed this with. It's been a focus of discussion for quite some time.

Q You heard Miss Sanchez testify yesterday that at or about the time that Carol was being interviewed by Mrs. Woolley, Mr. Smith and Lieutenant Cradle, that there were two men stationed behind the door leading to the corridor of segregation. Were you aware of that at the time?

A I was very confused of what was said because I didn't understand what they were saying.

THE COURT: The Court shares some of that confusion. It is not clear to me how the fact that they were standing there is relevant.

Maybe you ought to tell us why it is relevant. They could have had 100 people standing there. The question is did they do anything.

MR. LATIMER: I want to find out, I am trying to find out. I want to know what they were there for.

THE COURT: It isn't what they were there for.

It is what did they do, if anything?

MR. KANTOR: If your Honor pleases, this is cross examination. If counsel wishes to call Superintendent Warne in his own case --

THE COURT: I will permit reasonable scope. I am not concerned so much about that, but I don't see the relevance. Unless you can give me a basis for relevance, I don't think we should go into it.

If you give me a theory by which it becomes relevant, then I will permit her to answer it.

MR. LATIMER: That these people were stationed there solely because Carol Crooks, and why I don't know, but solely because Carol Crooks was going into to the Adjustment Committee at that time, and I don't know what the reasoning was, but it was some sort of precaution.

THE COURT: They are entitled to do that, but they are entitled to have people stationed there to avoid possible difficulties.

Q Is it a usual practice to do that?

THE COURT: Isn't the fact that these people were stationed there to safeguard against possible disruption? That's what counsel is asking.

THE WITNESS: I didn't even know that -- they confused me. Are we talking about people outside the doors.

I didn't understand it that way.

Q There are two separate --

A I am sorry, I just didn't understand it that way.

THE COURT: Do you have direct knowledge as to whether or not persons were stationed outside the door at the meeting on the 23rd?

THE WITNESS: There may very well have been.

THE COURT: Do you know?

THE WITNESS: I believe that that question I think you better ask Captain Woolley or Lieutenant Cradle because they are responsible. They asked if they could, and I said yes, if they wished.

THE COURT: Did they explain to you the purpose?

THE WITNESS: They just -- they were just apprehensive.

Q On May 24, the evening of May 24, between the hours of 6 and 7 o'clock, were a group of or a large number of correction officers called in to segregation?

THE COURT: Has this anything to do with this case? I would like youto tell me whether it does.

MR. LATIMER: Intimidation of the plaintiff, your Honor.

THE COURT: The Court understands that on that

particular day the plaintiff was asked to look in and declined to do so unless she received a written instruction to do so. I think it is a fair inference from all of the unchallenged testimony that is presently before us that they summoned sufficient aid to make her lock in. When she saw the presence of the aid, she voluntarily locked in. Isn't that so? I don't see that that has anything to do with whether or not the procedures in effect there for placing somebody in segregation satisfies constitutional standards. That's what I am here to try. I don't doubt for a minute that there was an hour's period there where the lady wouldn't lock in, and so to induce her to do so, they sent for some people. And I imagine they intended to compel her to lock in. When she saw the oncoming force, she did lock in. That has nothing to do with the issues in this case that I can see. If you can tell me I am wrong, I'd like to hear you.

MR. LATIMER: I have nothing further of this witness.

THE COURT: Any further redirect examination?

MR. KANTOR: No, your Honor.

THE COURT: All right, you may step down.

(Witness excused.)

THE COURT: We will take a 10-minute recess,

gentlemen. I ask you to proceed diligently. We had a lot of momentum yesterday but today we aren't getting these questions out and getting the answers out.

Go ahead with the case.

Ten-minute recess.

(Recess.)

F R A N C E S C L E M E N T, called as a witness by the defendants, having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. KANTOR:

Q By whom are you employed?

A I am employed by the Department of Correctional Services at the Bedford Hills Correctional Facility.

Q Do you hold a particular title?

A I am the deputy superintendent for security services at that facility.

Q Howlong have you held that particular title?

A Since 1970.

Q Are you currently on duty or serving in that title?

A Yes, I am.

Q You are not on leave now?

A A partial vacation.

Q Were you on duty on February 3, 1974?

A Yes, I was.

Q Did you have a particular function on that day? Let me rephrase the question.

Were you the chief officer on that day?

A Yes. I was the acting superintendent on that day.

THE COURT: Please speak up loud. If you stand back further, the witnesses are more likely to speak up.

MR. KANTOR: I certainly shall, your Honor.

THE COURT: Please do that. Loud.

Q You were the acting superintendent?

A Yes, I was.

Q How dod it come about that you were serving as acting superintendent?

A The superintendent was on leave that day.

Q You have to speak up.

A The superintendent was on vacation.

Q Did anything unusual occur on February 3, 1974 while you were on duty?

A Yes. At 8:55 I was notified that four officers had been assaulted and were taken by ambulance to the Northern Westchester Hospital.

Q Do you know who the four officers were?

A yes. Mrs. Lapay, Loretta Wilkins, Mrs. Roggy --

Q That is three.

THE COURT: Frame another question. Maybe the witness will remember the fourth one later on.

Q Does the name Ansty refresh your recollection?

A Mrs. Ansty.

Q Did there come a time when you sat on a superintendent's proceeding?

A Yes.

Q Will you tell us when that proceeding was held?

A The proceeding was held on March 8, 1974.

Q What was the -- what was it that gave rise to that particular superintendent's proceeding?

A It was as a result of an assault on four correctional officers.

THE COURT: Is any of this in issue? Nobody controverts this, do they?

MR. LATIMER: No. The superintendent's proceeding, the disposition of the proceeding is not in issue.

THE COURT: That's what I understood.

Q As part of the disposition of the superintendent's proceeding there was a referralto the Adjustment Committee. Did you make that determination?

A Yes, I did.

Q Will you tell me what you intended to accomplish by making that referral?

A Due to the seriousness of the incident with the assault on the four officers and during the superintendent's proceeding, there was no expression of remorse at all. We couldn't even get into a discussion about the incident, and so far as the personal safety of the people within that facility, I felt it best that the Adjustment Committee review it at the end of 60 days.

Q When would the Adjustment Committee review it?

A At the end of 60 days.

Q Are you familiar with the procedures of the Adjustment Committee?

A Yes, I am.

Q Could you describe those procedures for the Court?

A With reference to the superintendent's proceeding?

Q With reference to the Adjustment Committee proceedings generally.

A The Adjustment Committee is a body of three people --

Q Excuse me. Speak up so they can hear you way in the back.

A The Adjustment Committee is a body of three people. One member to be the rank of lieutenant or higher,

one member to be of the civilian staff and one rotating member, which is usually a correction officer.

This committee reviews all the inmate misbehavior reports that are submitted to the superintendent and makes sure their function is to secure the understanding and compliance of the rules and the procedures governing inmate behavior within the facility.

Q Would you say that a prime function of the Adjustment Committee is to adjudicate infractions or violations of rules committed by inmates?

A Yes.. Counselling and to try to change inmate behavior.

THE COURT: Attitude separate frommisconduct wouldn't come before that committee, is that true?

THE WITNESS: Yes, attitude would come before this committee.

THE COURT: If a person's attitude was completely unwholesome but he made no infractions, can you imagine such a circumstance?

THE WITNESS: Well, the attitude would have to be like aggressive or threatening atttiude.

THE COURT: But not accompanied by any misconduct.

THE WITNESS: If it is not accompanied by any misconduct.

THE COURT: Would such a circumstance come before the committee?

THE WITNESS: Not generally, if it is not threatening in nature.

Q Does the Adjustment Committee review program assignments for inmates?

A The Adjustment Committee may make recommendations to the Classification Committee regarding program assignments, if they feel that this is a reason for inmate misbehavior or if an inmate has gotten into serious difficulty on any of the assignments.

Q Does the Adjustment Committee have a punitive function?

A I didn't --

Q Does the Adjustment Committee have any punitive function? Does it impose punishment?

A The Adjustment Committee may confine residents to their rooms for a period not exceeding 30 days. They may restrict privileges. They may defer action and they may disregard reports, if there is not enough evidence to support the incident.

THE COURT: Can an inmate come before the Adjustment Committee on her own application?

THE WITNESS: Well, they can, but I don't know

that it's ever been done.

Q To your knowledge, is there a procedure for review of Adjustment Committee decisions by anyone?

A Yes. If the resident or if the inmate is not satisfied with the Adjustment Committee decision, she may ask the superintendent for review. If she is not satisfied with the superintendent's answer, she may request review from the Commissioner.

Q What is the procedure whereby an inma-te requests review of an Adjustment Committee proceeding?

A What is the procedure? The inmate would put this in writing to the superintendent.

Q And she would have to state her reasons?

A She states her reasons. She will state her reasons and ask the superintendent to review the Adjustment Committee decision.

Q Does the superintendent herself review it or do you review it?

A The superintendent would review it.

Q Is there any provision for automatic review of Adjustment Committee proceedings?

A Yes.

Q Where and under what occasions?

A If the resid nt receives above 30 days confine-

ment in segregation or if her privileges are taken beyond 30 days.

Q When you say 30 days, let us suppose, for example, that the Adjustment Committee meets and determines to confine somebody in the segregation or special housing unit for a period of seven days to be reviewed again in seven days, and this happens let us say four times or five times. At the expiration of 30 days, would at that point there be an automatic review?

A Yes, it would. At the end of 30 days, if the resident is confined longer than 30 days, this is an automatic review by the superintendent.

Q In other words, it is not just where the Adjustment Committee after hearing -- or after a meeting determines that the inmate should be confined for 30 days, but as soon as it reaches 30 days, is that correct?

A It is automatically reviewed, yes.

Q There is no limitation -- is there any limitation on the time within which an inmate can request review?

A Well, we haven't placed time limites on it. We have never placed any time limits on it.

Q Let us suppose, again taking another hypothetical, that we have a situation where the Adjustment Committee meets and determines that an inmate is to be placed in

segregation and to be reviewed in seven days and is again reviewed in seven days, and then a third review comes around. After the third review, can the inmate challenge the original determination or any subsequent determination?

MR. LATIMER: Your Honor, again, I think that it has been established that there is a procedure for the inmate to request --

THE COURT: The form of the question is bad, and if you are stating an objection to it, I will sustain the objection.

MR. LATIMER: Thank you, your Honor.

THE COURT: I think you ought to make it clear as you proceed further with your examination whether you are asking this witness to give her understanding of the procedures in effect or whether you are asking her to amplify on the written rules by importing any custom and usage which may exist. If there is a defined custom and usage, the Court will take evidence on it, if it has been followed in the case of this plaintiff.

Q Miss Clement, normally would any request for review of an Adjustment Committee proceeding come before, pass over your desk?

A If it did, I would refer it to the superintendent.

Q Normally you don't review it?

A No.

THE COURT: Am I correct in understanding that any inmate may see the superintendent or acting superintendent on request if she has a grievance or a problem, is that so?

THE WITNESS: Yes, she may write a request to see the superintendent or the deputy superintendent.

THE COURT: Do you get such requests?

THE WITNESS: Yes, we do.

THE COURT: Do you have any policy with respect to dealing with them when they do come in?

THE WITNESS: Yes, we do. Depending on what the request is, usually the resident will state in her request what she wants to see us about. If it is something that only the superintendent or only the deputy can handle, then we will interview the resident. If it is something that someone in a lower supervisory position can handle, it is channelled to that person to answer.

Q To your knowledge, Miss Clement, did Carol Crooks ever request a review of any Adjustment Committee proceedings?

A I believe that she has. I believe she has.

Q Do you know if in fact a review was had?

A I don't know. I don't know.

MR. KANTOR: I have no further questions at this time, your Honor.

THE COURT: You may cross examine.

CROSS EXAMINATION

BY MR. LATIMER:

Q A couple of things. You testified that you conducted the superintendent's proceeding on March 8 which involved the incident of February 3rd. Is that right?

A Right.

Q You also testified that the plaintiff, Miss Crooks, remained silent at that time, she refused to explain the incident, is that correct?

A I said that we couldn't get any discussion about the incident, yes.

Q Did Miss Crooks offer you a reason why she wouldn't discuss that particular incident?

A Miss Crooks read a prepared statement into the record of the superintendent's proceeding.

Q Wasn't that statement to the effect that there may have been pending criminal proceedings with respect to that incident and she didn't want to jeopardize that particular case in terms of incriminating herself before the Superintendent's Committee? Isn't that the

explanation that she offered at that time?

MR. KANTOR: That is conceded, your Honor.

THE COURT: Is that so under New York State law? Do they use that proceeding in the County Court?

MR. KANTOR: No, they cannot, your Honor. It is provileged.

THE COURT: I would think it is privileged.

MR. KANTOR: Specifically under the rules under which we operate, it is privileged.

MR. LATIMER: Unfortunately she didn't have the advice of counsel at that time, she didn't know it, she wasn't aware of it, and she was trying to protect her rights. But that's not at issue here anyway.

THE COURT: I would not think it is in issue in any way. However, they would have told her that "You don't have to be concerned, your rights are protected and anything you tell us is privileged and can't be used against you."

THE WITNESS: This is what we did.

THE COURT: You did tell her that?

THE WITNESS: Before the superintendent's proceeding began. This was read to her, that anything -- that wouldn't be used over her objections.

Q On direct examination you testified to certain

Adjustment Committee actions, including loss of privilege, confinement in punitive segregation, and things like that. Aren't those really punitive?

MR. KANTOR: Objection to the term punitive?

MR. LATIMER: She said punitive.

THE COURT: I thought perhaps she did. It is only an introductory phrase. Strike it out. Don't make speeches to the witness. Ask her a fact question.

Q Do you consider those measures to be punitive in nature that you described on direct examination?

A For the Adjustment Committee?

Q The sanctions that the Adjustment Committee can take that you told us about on direct examination.

A I would have to answer the question this way.

Q I would like a yes or no.

THE COURT: You are asking her her opinion. Of course, it is the Court's opinion that is controlling, not the witness' opinion. But you asked her for her opinion, if you want her opinion I will let her state her opinion.

Q Okay. In my opinion, only the necessary -- as stated before, so far as Adjustment Committees are concerned, the primary responsibility is counselling and trying to secure the inmate's cooperation concerning

inmate behavor within a facility. The Adjustment Committee, yes, they do have -- they can confine if there is a lack of cooperation there.

THE COURT: Am I correct in understanding that before somebody gets to the Adjustment Committee, a correction officer can admonish the inmate and tell her in effect "If you don't correct your behavior, you are going to the Adjustment Committee?"

THE WITNESS: Yes.

THE COURT: Isn't that so?

THE WITNESS: Exactly, yes.

THE COURT: Is it a standard practice for the Adjustment Committee to do otherwise than impose sanctions, such as confinement?

THE WITNESS: Yes, the Adjustment Committee may have -- they reprimand and they investigate the contents of any inmate misbehavior report, if when they interview the resident they bring up certain facts that they feel has not been substantiated.

MR.LATIMER: I have nothing further.

THE COURT: Anything else for this witness?

MR. KANTOR: No further questions of this witness.

THE COURT: You are excused.

(Witness excused.)

MR. KANTOR: Call Captain Woolley.

Your Honor, I have no intention of recalling Miss Clement. May she stay.

THE COURT: She is not a defendant, but if she is not going to be recalled, I will let her stay.

RUTH WOOLLEY, called as a witness by the defense, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KANTOR:

Q By whom are you employed?

A New York State Department of Correctional Services, Bedford Hills.

Q In what capacity are you employed?

A Correction captain.

Q How long have you been so employed?

A 15 years, all told.

Q How long have you been a captain?

A Two years.

Q Can you tell me what your responsibilities as a captain are?

A General well-being of the institution, oversee the general operation.

Q Is there a particular chain of command at Bedford Hills?

A Well, yes, of course, referring upward, when the need arises.

Q In the line of command, you wouldn't be first in command, obviously. What number are you?

A Number 4.

THE COURT: To whom do you report, is what he is asking.

THE WITNESS: The assistant deputy who in turn reports to the deputy and the deputy reports to the superintendent. Number 4.

Q Have you in your capacity as captain ever sat on an adjustment committee?

A Since the adjustment committee was first incorporated, I have sat a total of possibly a year and a half.

Q Is that continuously, every day?

A I served for about 9 months every day. I served in 1970 for about six months, alternating with the assistant deputy when we first put it into effect.

Q Did you serve on any adjustment committees in 1974, this year?

A About three times.

Q Did you serve on an adjustment committee on May 23, 1974?

A I did.

Q Were you the chairman of that adjustment committee?

A No, I was not.

Q WEre you the highest ranking officer on that

adjustment committee?

A Yes, but I was not serving as the chairman.

THE COURT: How is the chairmanship determined?

THE WITNESS: Under union agreement, it is a bidded post. For the last several months we have not been able to get anyone to bid for it, so it has been assigned by the deputy, one month to each lieutenant.

THE COURT: Do they pay something for being the chairman?

THE WITNESS: No.

THE COURT: Why is it a bidded post?

THE WITNESS: It is union agreement. The union insists that we bid for all posts within the institution.

THE COURT: But there is no benefit to be chairman, is that correct?

THE WITNESS: None whatsoever.

THE COURT: No monetary --

THE WITNESS: None whatsoever.

MR. KANTOR: It is merely a method of assignment.

Q I show you now Defendants' Exhibit M and ask if you have seen that before?

A I wrote it.

Q Did you sign it?

A Yes.

Q Will you tell the Court what it concerns?

THE COURT: The Court knows it concerns this plaintiff. Isn't that so? Nobody disputes that.

MR. KANTOR: Okay.

Q You sat on the adjustment committee on May 23, 1974. Did you see Carol Crooks on that day?

A I did.

Q Did you have a conversation with Carol Crooks on that day?

A I did.

Q Could you tell the Court in your own words or as best you can remember exactly what the conversation was between yourself and whoever else was on the adjustment committee and Carol Crooks on that day?

A Well, we discussed the continued confinement of Carol in the segregation unit. Carol was quite upset --

THE COURT: You will have to tell us the substance of the conversation, not the exact words but the substance of what she said to you or the other members in your presence, and what you or they said to her.

THE WITNESS: When we first went into our interview room, I believe that I referred the first conversation to Miss Cardle, since she was the chairman, and I think

Miss Cradle told Carol that she would be confined to the segregation unit.

Carol asked the question, was she going to be confined for the length of the duration of her sentence, to which I replied, "No, that is not the case, Carol. You will be seen weekly while you are here."

She asked about privileges. She asked was Mrs. Warren aware of this situation and had we discussed it with Mrs.Warren. I don't think -- I don't recall mentioning Mrs.Warren's name. I believe I referred to Mrs. Warren and Miss Clement and my superiors as administration. I said, "The situation had been discussed with administration, and taking into consideration the overall pattern of behavior," Carol's background, we felt it was necessary to confine her to the segregation unit for the present, but she would be seen"within the week".

I quote that. An expression we always use when we confine a girl for longer than one week, I say she would be seen "within the week."

She asked about going to upper campus for privileges, she asked about a television set, she asked about a radio, to which I replied that she would be confined under seg rules.

In an effort to find some sort of a weakness or,

I don't know what you would callit, exactly, a point, everybody has a point sometimes which you can reach them when you counsel them, I asked her, I made a statement, I said,"Carol, I am sure you didn't mean to hurt Roggy." Miss Roggy is a sergeant who is very well liked throughout the en tire campus because she goes to bat for the girls, and she goes overboard trying to help them.

Carol looked at me and she said, "I didn't say that." I felt that she had no remorse, she didn't feel sorry, that there was no change in her attitude.

THE COURT: Did you express that conclusion to her?

THE WITNESS: No, I did not, because I felt it would fall on deaf ears.

Q Did Carol make any attempt in the course of that meeting to find out why she was being kept in segregation after the 23rd of May?

W I can't recall exactly.

Q Did you at any time --

A She asked about educational -- her educational program, and Mr. Smith, who was the educational supervisor was the third members of the committee, and I said, "Well, there is no better person here, I refer you to Mr. Smith, for that type of information."

Mr. Smith told Carol that the equivalenc program was just about at an end and the college courses had terminated, but he would look into further courses if they started a summer school program. I think one of the last things I said to Carol when she made mention about how long she was going to be there, I said, "Nothing is forever. We will see you next week." I said, "I won't see you, I don't think, but someone will."

Q Did you ever at any time say to Carol that she would be a seg resident?

A Carol didn't have any other living quarters, so therefore she would have been a resident in seg. She had been in there --

Q Did you ever at any time make a representation to Carol that she would be housed in segregation under any other conditions than normal seg rules?

A No.

Q Did you ever at any time say to Carol that she would be permitted out during the course of the day and merely function under rules of general population, but just living in seg?

A No. As a matter of fact, the last thing I said when she left the room was that she would be there under

seg rules, because there is no other way you can have a girl in segregation.

Q You were in court yesterday, were you not? You were here yesterday?

A Yes.

Q You heard Carol Crooks testify?

A I might have used the term "resident." But in the absence of any other living quarters, that would have been her residence.

THE COURT: I am not clear that I understand your prior answer.

Did I understand you correctly to say that it is not possible to have segregation at Bedford Hills other than under the terms which had been referred to as punitive segregation, that is to say where you are locked in 23 hours a day?

THE WITNESS: That's right. We have never had anyone admitted in segregation in any other situation other than segregation rules.

THE COURT: Is it impossible to have such type of segregation?

THE WITNESS: No, your Honor, it is not impossible. We are in a state of flux where our rules can change.

THE COURT: You said you were unable to. I was

trying to ascertain why you were unable to.

THE WITNESS: It would create a hardship on the officers.

THE COURT: What would the nature of the hardship be?

THE WITNESS: Well, they must get the place clean, they must serve meals, they also have to give each inmate a shower, they are responsible for seeing that the entire unit is clean, not only certain areas, they also must give this one-hour exercise period daily, which usually runs into longer than an hour. That is the minimum that they give. If they don't have many girls, they give longer periods.

THE COURT: Can you envision a circumstance where a person is guilty of no misconduct but cannot appropriately be maintained in the general population?

THE WITNESS: Well, I don't think they belong in our segregation unit. They should be in our other special housing unit.

THE COURT: What is the other special housing u nit?

THE WITNESS: It is for disturbed girls, girls that have been intimidated, those that through psychiatric evaluat9ion cannot function in the general population

for one reason or another.

THE COURT: Those people live together in a corridor, do they?

THE WITNESS: We keep them there. We try to get them out into the population. We try not to keep them there too long. We usually refer in depth to the psychiatrist and the psychologist before we make our decisions.

THE COURT: Have you ever had a prisoner who was an informer for the Government or had been involved in some criminal matter where her life was in danger?

THE WITNESS: Not to my knowledge. I would have to review many records.

BY MR. KANTOR:

Q Can you tell me in the meeting on May 23 what you relied on in making the determination that Carol was not yet ready to return to the general population?

A Mainly the record, Carol's overall behavior since she has been in the institution, which has been one of assaultive and disruptive.

Q Was there a psychiatric report on Carol in the record?

A Regretfully, no.

Q Why not?

A I believe she refused to see our psychologist.

Q Was that after she was placed in seg initially?

A Prior to that I couldn't say. I don't know whether she has ever requested an interview, but following the incident of February 3, I don't believe we have any psychiatric report.

Q Were you on duty on May 24?

A Yes, I was.

Q Did there come a time when you again had to spend your time dealing with the p?oblem involving Carol Crooks?

A Yes.

MR. LATIMER: I object to the form of the question, your Honor.

THE COURT: I can't hear you.

MR. LATIMER: I object to the form of the question.

THE COURT: Yes, the form is bad. There is no jury here. I will let it stand. Let's proceed along.

Q Can you relate to the Court exactly what happened?

THE COURT: Is this cumulative or is it a different view of what happened?

MR. KANTOR: It is different from plaintiff's view.

THE COURT: All right. If it is a different view, I will let it be answered. What happened that you saw or know about from your own knowledge.

THE WITNESS: Well, the committee had seen Carol on the 23rd and when I left the segregation unit Carol was back in her room. Apparently there was no misunderstanding between the morning officers that this was the way she was supposed to be in segregation.

Q Let me interrupt you. She was not out of her room after the adjustment --

A When I left the segregation unit, Carol was locked in her room.

Q Proceed.

A That was the morning of the 23rd. Well, between the morning. It might have been 12:30, I didn't look at the clock. The next afternoon Lieutenant Guenther came on duty at four o'clock and in discussing the events of the past several days, something came up about Carol Crooks, and Miss Guenther made the statement that she did not think Carol Crooks was locked, and I said, "Well, that's not possible. She is confined in segregation."

Barring a few interruptions, I called segregation and spoke to the officer on duty over there, Miss Doyle. I asked her, "Have you got Carol Crooks locked?"

She said, "Well, no." So I questioned her why she didn't have Carol Crooks locked. She said, "She is here as a resident and she is not supposed to be locked."

I questioned her further and I asked her who had given her this information, and she said Miss Terry had given her this information, the morning officer.

I said, "Well, I don't understand that. Have you any orders in your book? Will you please refer to your logbook?"

She referred to the logbook. She said, "There is no orders here."

I said, "There is a misunderstanding."

Then she made the statement that Carol had told her that she was not to be locked. I said, "From whom do you take your orders? Will you please ask Carol to go into her room because she is there under segregation rules and she must be locked."

Then Miss Doyle came back to the telephone and she said that Carol refused to go into her room, that she was not supposed to be locked.

I said, "Miss Doyle, there is a misunderstanding. That is not what Carol was told."

So we had quite a conversation. It must have lasted at least 15 minutes. This went on for another 15,

20 minutes. I had three or four different conversations with Miss Doyle in which each time I asked her to please ask Carol to go into her room, as she is supposed to be.

The last one was that CArol would not go into her toom unless she got something in writing from either myself or Miss Warren.

I said, "This is not possible. No, Carol is expected to go into her room," and I think I waited another 10 or 15 minutes and called Miss Clement and called Miss Doyle to recheck.

Q What was your purpose in calling Miss Clement?

THE COURT: Let's cut this short.

A The superintendent in charge.

THE COURT: Do I understand correctlythat the delay or failure to go into the room or the demand for a written instruction to do that was not the subject of a meeting of the committee on adjustment? Am I correct in that understanding?

MR. KANTOR: I don't believe so, your Honor. I believe there was a meeting of the adjustment committee on that particular issue.

THE WITNESS: The day before.

THE COURT: No, I am talking about -- as I

understand it, there was a period of time during which the plaintiff refused to go in her room in the absence of written instructions. What I am inquiring is was that conduct the subject of a meeting of the board of adjustment? Yes or no.

THE WITNESS: No.

MR. KANTOR: Yes, it was, your Honor.

THE COURT: Will you hand me the exhibit relating thereto? Or at least give me the number of it.

MR. KANTOR: I don't believe it is in evidence yet, your Honor.

THE COURT: You are making slow going and hard work of this matter. Let's get the documents.

MR. LATIMER: Your Honor, if I may be of some help, I believe it is the adjustment committee report that is Defendants' Exhibit L.

THE COURT: All right. That seems to be correct. Exhibit L is in evidence. Let's proceed. The Court has L up here.

Q Did there come a time on that day when you went down to the segregation unit?

A I requested the assistance of the --

Q Madam Witness, please listen to the question. Did there come a time on that day when you yourself went

down to the segregation unit?

A Yes, I did.

Q Can you tell me what happened after you went down to the segregation unit?

A When I arrived at the door, Carol Crooks was sitting on the floor, I believe it was on the left-hand side of the door. She got up. As the officer opened the door for me, she got up and walked in to proposed kitchen and sat down behind the table. I walked in to her, and I said, "Carol, I would like you to go into your room," and she said, "I want something in writing."

I said, "Well, I am not going to give you anything in writing. I want you to abide by the order that I have given you. You are to go into your room."

Since there were five men and 12 officers, Carol got up and went into her room, and there was no further controversy.

MR. LATIMER: I object to the last part and move it be stricken as stating what was in the witness' mind.

THE COURT: It doesn't really state that, but I don't understand that this witness' version of what occurred is any different than the version presented by the plaintiff. That is why I feel we have wasted some

time. What this witness has told me is entirely consistent with the evidence the plaintiff offered in this case. The Court certainly infers that the order was given and there were people standing around and the plaintiff decided to abide by the order without insisting on it being in writing.

I think the record is quite clear on this whole matter, and Exhibit L indicates that they denied her exercise period and shower as a result of the adjustment committee meeting, and apparently her attitude on that occasion was recorded as good, and then the exercise period and showers were restored.

Is there anyone here in this courtroom who disputes the correctness of that view of the facts?

MR. KANTOR: I don't believe so, your Honor.

THE COURT: Let's go forward.

Q Did you sit on any further adjustment committees concerning Carol after May 23?

A No.

MR. KANTOR: I have no further questions of this witness.

CROSS-EXAMINATION

BY MR. LATIMER:

Q You have been a correction officer for 15 years and you have been a captain for two years, and you have sat

on many adjustment committees, is that correct?

A Yes.

Q During the times that you sat on adjustment committees what is the longest cumulative time that you know, if you can remember, that a person has been kept in segregation based on adjustment committee reports and recommendations?

A 30 days.

Q No inmate has ever been kept in segregation longer than 30 days without a superintendent's proceeding?

MR. KANTOR: Objection.

THE COURT: What is the objection?

MR. KANTOR: I believe that it was a misstatement of the witness's answer.

THE COURT: The witness did --

MR. LATIMER: I am asking another question.

A I have never had to deal with anything that I felt necessitated a longer period of time.

THE COURT: I assume this questioning is directed to the period beginning in 1970, because what they did before they had the adjustment committee is irrelevant.

MR. LATIMER: Of course.

Q I am talking about the adjustment committee procedures as they exist now and in Chapters 5 and 6 and

as applied at the institution.

You know of no instance --

A I have never had occasion to deal with one that I felt was necessary to confine a girl longer than 30 days.

Q Have you ever in cases other than Miss Crooks kept a woman in segregation -- I am sorry, let me rephrase the question. When a superintendent's proceeding has resulted in a period of segregation and a referral to the adjustment committee, have you ever, aside from the case of Miss Crooks, had occasion to keep that person in segregation beyond the stated term in the superintendent's proceeding?

A No, because I have never dealt with anyone with the same type of misbehaviors that I have experienced with Carol.

Q So that what was done with Carol has never been done before, to your knowledge?

A No.

Q Did you discuss the adjustment committee proceeding of May 23 involving Carol Crooks with anyone from the administration before the committee met to consider Carol's case?

A I did discuss it with my superintendent. I discussed it with quite a few people. They were not all in

a position to give me guidance.

Q You discussed it with your superintendent. Will you please tell us the terms and substance of that discussion?

A I believe I told Mrs. Warren that I felt there was a situation existing on the campus whereby the girls were very divided. We were also being undermined to a great extent. I felt that --

Q Not what you felt --

THE COURT: This is what she said. She is telling Mrs.Warren that this is what she felt.

A The feelers I got back from officers, different things which I can't say, she said girls told them, and so on, which is not admissible, and -- but my feeling was that the whole population and the general atmosphere of the facility was greatly disturbed over this entire incident, and I didn't feel that at this time it might be the wisest thing to permit Carol to enter the population.

Q So that you had made up your mind what you were going to recommend to the adjustment committee before the adjustment committee met?

A What I felt. That is my job, to know what is going on in the institution.

Q But you had made up your mind -- had you made up

your mind what you were going to recommend before the adjustment committee met?

A No, because we are always subject to change.

MR. KANTOR: Counsel is arguing with the witness.

THE COURT: He may be arguing slightly. However, I will permit the answer to stand.

Q But you did express an opionion to the superintendent that Carol should remain in segregation?

A I was disturbed over the atmosphere of the facility, yes.

Q You did express that opinion?

A I said I did not know, I did not feel that perhaps it would be the wisest thing to place her on the campus at the present time.

THE COURT: This had nothing to do with her, is that correct? You are talking about some --

THE WITNESS: Quote, as I said to Carol, the general well-being of the institution would be better served by confining her in the segregation unit at that time.

THE COURT: That in your judgment would have been true whether she exhibited contrition or not?

THE WITNESS: If she exhibited contrition, I would say that we should evaluate the whole program again.

THE COURT: I will have to break now for lunch, gentlemen. Two o'clock please. (Luncheon recess.)

THE COURT: You may continue your cross-examination, Mr. Latimer.

R U T H W O O L L E Y resumed.

CROSS-EXAMINATION (continued)

BY MR. LATIMER:

Q Captain Woolley, did you know Carol before February 3, 1974?

A Yes, I did.

Q Did you have occasion to sit on adjustment committees at which Carol appeared before, before that date?

A Yes, I did.

Q Do you recall how many times you sat on adjustment committees with Carol?

A I'd have to refer to her adjustment record offhand, but it was a number of times.

Q Is that in court?

A It is available. This records does not say how many times I sat. It gives the record of her adjustment proceedings.

Q At the moment all we are concerned with is your participation in those proceedings. Would it refresh your recollection to say that -- if I were to tell you that -- if I were to show you this adjustment committee report

dated March 22, 1973, and ask if you sat on that adjustment committee?

A I signed it as chairman.

Q And again on May 18, 1973? I am just asking you if that refreshes your recollection that you sat on that committee.

A Yes. The chances are I sat on most of them because I was the chairman of the adjustment committee from January 8th until October.

Q Did you ever sit on the adjustment committ ee in which you wrote up the infraction report concerning Carol Crooks?

A To the best of my recollection, no.

Q I will show you --

MR. LATIMER: I would like a 3-page document marked for identification.

xxx (Plaintiff's Exhibit 6 was marked for identification.)

(Plaintiff's Exhibit 7 was marked for identification.)

Q I will show you the third page of Plaintiff's Exhibit 6 for identification and ask if your signature -- and ask if that is an infraction slip and if your signature appears thereon?

A Yes.

Q Then I will show you the first two pages and ask you if those are adjustment committee appearance reports and reappearance reports and ask if your signature appears thereon?

A The first is a reappearance dated 6/25. This was a first appearance.

Q Does your signature appear on it?

A Yes.

MR. LATIMER: I show them to counsel and offer this.

Q I will show you Plaintiff's Exhibit 7 and I will ask you if your signature -- if these are copies of an infraction slip and adjustment committee reports, and if your signature appears on each of these reports?

MR. KANTOR: Your Honor, I object at this point to the introduction of Plaintiff's Exhibit 6 for identification on the grounds that counsel has misrepresented or appears to erronously construe the meaning of -- I will withdraw that.

Can we hold off --

THE COURT: It isn't quite clear to me what the relevance of Exhibit 6 is. I would like to either see the exhibit or be told why it is relevant.

MR. LATIMER: The relevance is to show a bias on the part of the witness in future proceedings. Due process, of course, requires an impartial tribunal.

THE COURT: You see, we are trying this case against the background of a recently decided Supreme Court decision which the Court has been reading and rereading since this hearing began, which the Court personally directed that copies of the opinions be furnished to each of you gentlemen.

It is quite clear that Page 5201 of the Law Week Report says an impartial hearing board -- I gather they are quoting the cases in the footnote with approval, and henceforward an impartial hearing board will be required to the extent that a member of the board may not participate in any case as an investigating or reviewing officer of be a witness.

I assume that description includes being a complainant. So the Court will assume and if necessary will direct that all future proceedings, if any, relating to your client, Mr.Latimer, must comply with that rule.

What they did in the past is apparently not upset retroactively bythe case just referred to, the Wolff case.

MR. LATIMER: Your Honor, I don't contend that it is retroactive, but I do believe that the case does furnish

guidelines.

I don't believe the Supreme Court really broke any new ground in its decision.

THE COURT: I must disagree with you there.

MR. LATIMER: Your Honor, it is rudimentary in most due process cases, if not all of them, where hearings are involved, that they be before an impartial tribunal. The purpose of this is to show that Mrs. Woolley had a definite bias on or about May 23.

THE WITNESS: I don't understand how.

THE COURT: Not necessarily that she had a bias, but that she was a party who had been a charging party. Isn't that all it shows?

MR. LATIMER: That is correct.

THE COURT: The Court assumes that the defendants will comply fully with the rules being laid down in this case which we have been talking about for the last three days, in futuro, that they will comply fully.

MR. KANTOR: I will have more to say on that hopefully within an hour. Your Honor, may I have a very short voir dire?

THE COURT: I am not disposed to take extensive evidence as to what they did in the past. If their procedures were unconstitutional in the past, they are now

on notice from the Supreme Court of the United States that they have to do differently in the future.

MR. LATIMER: Except that it has a direct bearing on -- we contend they were unconstitutional in the past even before McDonnell, including this aspect of it, and it has a direct bearing on the injuries incurred by the plaintiff.

THE COURT: This is an action for injunctive relief.

MR. LATIMER: That is correct, your Honor.

THE COURT: The scope of the relief to be granted is against the background of the Wolff case. I don't think you need the exhibit.

MR. LATIMER: I will withdraw the offer.

THE COURT: All right.

MR. KANTOR: I move that any testimony concerning this exhibit be struck.

THE COURT: Just because it is irrelevant, that is all.

BY MR. LATIMER:

Q Are you familiar with the incidents of February 3, 1974?

A Yes, I am.

Q Did you have any part in the investigation or

subsequent proceedings before May 23 involving that incident on February 3?

A Not that I recall, other than reading the reports.

Q Did you discuss that incident with Mrs. Warne between February 3 and March 8 at any time?

A Directly with Mrs. Warne, the incident? No. It might have been discussed from time to time in different meetings, but not directly with Mrs. Warne.

Q Did you have anything to do with the investigation of the February 3 incident?

A No.

Q Did you discuss Miss Crooks' appearance before the adjustment committee at any time after May 23? I mean her subsequent appearances before the adjustment committee.

A No.

Q Did you ever discuss Miss Crooks' conduct with Miss Waterman or Miss Guenther or Miss Cradle after the 23rd?

A No.

Q I am going to show you the answer in this case and I will ask you if you have ever seen the answer?

A I don't understand what I am supposed to answer.

Q Have you ever seen this document before?

A No.

Q Did you know that Mr. Kantor or anyone from the Attorney General's office was preparing an answer in this case?

MR. KANTOR: I am going to object at this point, your Honor.

THE COURT: I will allow it as reasonable cross-examination. That can be answered yes or not.

A Yes.

Q Did you discuss that proposed answer with anybody from the Attorney General's office?

A No. I was told I had to appear in court.

Q The Attorney General does represent you in this proceeding, is that correct?

A So I understand.

THE COURT: The Court knows that. Let's keep moving. Don't waste time. The Court knows that the Attorney General represents all the defendants here. It appears on the face of the docket. Let's go forward.

Q The answer states in Paragraph Eleventh --

THE COURT: No questions about the answer. This witness says she hasn't discussed and has never seen it. Is that correct?

THE WITNESS: That is correct.

THE COURT: All right, let's go on to something else.

Q You testified that you -- on the evening of May 24th you called for assistance because Miss Crooks wouldn't lock in at that time without a written explanation.

Have you ever had occasion before when an inmate wouldnot lock in, in your experience at Bedford Hills?

A Yes, from time to time.

Q Is it the usual practice to call for 17 to 24 reinforcements?

A We call for all available officers. Now, that might be five and it might be 10.

Q Every time an inmate refuses to lock in?

A Depending upon the time of the day and the programs that are in progress.

Q At six o'clock at night, do you always call for reinforcements if an inmate refuses to lock in?

A If we are experiencing a refusal, yes, for any length of time.

Q You have testified that you sat on adjustment committees with Miss Crooks before May 23, is that correct?

A I was the chairman for ten months.

Q On any of those occasions, if you remember, did you have occasion -- did you discuss that case with anyone

before the meeting of the adjustment committee? In other words, when Carol was due to come up to the adjustment committee, had you ever before discussed her case in advance?

A You mean prior to this incident?

Q Yes. For instance on March 22, if you remember, did you discuss her case before that committee meeting?

A The adjustment committee would meet. As a rule, before we call a girl in to discuss the infraction, we would discuss the case. Anybody that had any background knowledge of the girl would discuss it. Then we would call her in and discuss the incident.

Q So that you would have a discussion of the case before she was present?

A Let's say we discussed the infraction.

Q Before she was present in the committee room?

A Yes. But we didn't --

Q Would you have discussed it with administration or other supervisors or corrections personnel before you went into the committee room?

A In a very unusual situation I might discuss it with the deputy, my superior.

Q In terms of assignmentswhile a person is in segregation, such as washing dishes, are those assignments

done on a voluntary basis?

A They have always been so.

Q If a correction officer asks a woman to do a voluntary assignment and she refuses, what is usually done, in the normal case, if you know?

MR. KANTOR: Objection, your Honor. Beyond the scope of direct examination.

THE COURT: It may not be. As I understand it, one of the proceedings before the adjustment board arose out of the fact that nobody would volunteer. Isn't that so?

MR. LATIMER: That is correct, your Honor.

THE COURT: I will let it be answered.

A The usual procedure on the campus is to set up assignments in order to properly get the work done in the institution.

THE COURT: You mean you assign inmates to do it?

THE WITNESS: As a rule. At times it is done on a voluntary basis. If you cannot get volunteers, then you assign.

Q And if a woman refuses to volunteer, a correction officer comes to her and says, "Will you volunteer to wash dishes," and she says "No, I am not going to volunteer to wash dishes tonight, I don't feel well, I am tired," or

whatever, what is done to that woman?

A It is a legitimate request. She ate.

Q But the assignment is voluntary?

A Not necessarily. If you cannot get a volunteer, then it would be up to --

THE COURT: Counsel is assuming that there is a request for somebody to volunteer. He is not asking you to assume a direction is given.

MR. LATIMER: That is correct, your Honor. Thank you.

THE WITNESS: It would be a volunteer basis.

Q If she refuses to volunteer?

A Then the officer would have to assign someone. The work must be done.

Q If she merely refuses to volunteer, no infraction is going to be written in the normal case, is it?

MR. KANTOR: Objection to the statement by counsel "normal case."

THE COURT: The form is bad, but cover the ground --

MR. LATIMER: I will rephrase the question.

THE COURT: It is not a disciplinary infraction if you refuse to volunteer?

THE WITNESS: No, but it is to refuse when you

are so asked by the officer.

THE COURT: When you are assigned?

THE WITNESS: When you are assigned, and you refuse.

Q When you are assigned to such a job, does the inmate get paid for it? Not on a volunteer basis, if an assignment is made to wash the dishes, does she get paid for that work?

A Not in segregation.

MR. LATIMER: I have nothing further.

THE COURT: Anything else for this witness?

MR. KANTOR: I have one or two on redirect, your Honor.

REDIRECT EXAMINATION

BY MR. KANTOR:

Q You testified on cross-examination that you knew of no instances at Bedford Hills where it was necessary to confine the inmate more than 30 days in excess of a 60-day superintendent's proceeding. Do you know of any other instances in any other institution?

THE COURT: Where this witness has been employed?

MR. KANTOR: If she knows.

A No, I do not.

Q Do you know of any other instances where an

inmate has assaulted four correction officers at Bedford Hills?

A I don't know of any officers having been assaulted in my time at the State.

THE COURT: In your whole time there, nobody has ever assaulted an officer?

THE WITNESS: Not that I can recollect.

THE COURT: Really? Never?

Q I'd like to address your attention again to May 22. You testified that you had a conversation concerning Carol Crooks with the administration. Was it your normal assignment during this period to be assigned to the adjustment committee?

A On May --

Q May of this year.

A No.

Q Is it usual for a captain to sit on an adjustment committee?

A Not usually. But I have done so.

Q At the time that you discussed the matter with the administration -- the matter of Carol Crooks with the administration, did you know or did you intend to sit on Carol Crooks adjustment committee?

A No.

Q Then how did it come about that you sat on Carol Crooks admustment committee?

A Well, Carol had asked me what was her date, her release date as far as her superintendent's proceedings were concerned. The officer called me up and asked me was it the 21st? Carol said it was the 21st. I got out her records and checked the time and came up with the 22nd. Then I looked it over again and I realized I had made an error, it was the 23rd.

So I called over and verbally relayed this to the officer. Carol wrote me a note and said that as far as she could compute the time, it was the 21st, So then I redid it on a piece of paper and sent it to her.

I knew she was appearing before the adjustment committee, and I wanted to talk to her about that release date because I felt there was a misunderstanding, and that was why I went over.

In the meanwhile, Miss Cradle didn't have anyone else to sit, so I sat with her as a member of the committee.

Q In other words, when you had discussed the matter with the administr ation, you didn't know or intend to sit on the adjustment committee concerning Carol Crooks, is that right?

A No. There was no reason for it.

Q You testified that you had come to a tentative conclusion that the best interests of the institution would not be served by having Carol -- I withdraw that.

MR. KANTOR: No further questions, your Honor.

THE COURT: Anything else? All right, you are excused.

(Witness excused.)

S A R A C R A D L E, called as a witness by the defense, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KANTOR:

Q Miss Cradle, by whom are you employed?

A I didn't quite --

Q By whom are you employed?

A New York State Department of Correctional Services?

Q Where do you serve?

A Bedford Hills, New York.

Q Is that the Bedford Hills correctional facility?

A Right.

Q Do you have a particular rank or function?

A Lieutenant.

Q Is that correction lieutenant?

A Correct. I am sorry.

Q In that capacity, have you ever served on an adjustment committee?

A I have.

Q Did you bid for that job?

A No, I didn't. I am the junior lieutenant and I served.

Q It was assigned to you, was it?

A It was assigned to me.

Q Between what two periods of time did you serve on the adjustment committee?

A I served in the month of May, I believe.

Q May of this year?

A Right.

Q During that month did you serve as chairman of that committee?

A Right.

Q During that month did you have occasion to see Carol Crooks?

A I did.

Q On how many occasions?

A I don't remember exactly, but I think it was on two occasions, possibly three.

Q Did you see Carol Crooks on June 3, 1974?

A June 3?

Q Yes.

A I am sorry, Mr. Kantor, I don't have the dates in my mind, and I didn't write them down. It is possible.

xxx (Defendants' Exhibit N was marked for identification.)

Q I show you now Defendants' Exhibit N for identification which consists of three sheets which comprise two adjustment committee appearance reports. I ask you to look at only the top sheet of that and ask if that refreshes your recollection as to whether or not you sat on the adjustment committee on June 3, 1974?

A I sat on that adjustment.

Q You also sat on the adjustment committee on May 23, 1974, did you not?

A Right.

Q Prior to May 23, 1974, did you have a discussion with anybody concerning the possible disposition of Carol Crooks' matter which was upcoming the next day?

A The 23rd, you are speaking of?

Q Right.

A I discussed it, yes.

Q With whom?

A Captain Woolley and Miss Warren.

Q And Miss who?

A Miss Warren.

Q Would you relate for me and the Court the nature and exactly what was discussed at that conference?

A There was a review of the progress Carol had made, a general review. We were asked what we knew about her behavior.

Q Who asked?

A Well, it was a general discussion. That was the topic of the general --

Q Proceed.

A Had she made improvements, and, etc. Just a general review of reports.

Q Did you reach any kind of conclusion based on that discussion with Captain Woolley and Superintendent Warren?

A Not really.

Q What do you mean, not really?

A As I said, it was a review of her general reports, discussion of --

Q Was any suggestion made concerning disposition of Carol Crooks matter at the adjustmen tcommittee?

A I don't recall.

Q In other words, what I am trying to get at --

A All right, I don't understand.

THE COURT: Don't make a speech. Frame the question.

Q Did you go into the adjustment committee meeting with your mind made up?

A No, I didn't.

Q When you sat on the adjustment committee on June 3, did you go into that adjustment committee with your mind made up?

A As I said, I don't remember the dates. Now, I do remember --

Q The second one that I just refreshed your recollection about.

A The second one? I remember that adjustment clinic, yes.

Q Did you walk into that adjustment clinic with your mind made up concerning the disposition of Carol Crooks case?

A Well, the purpose of that meeting was to talk to Carol to see how she felt, if there was any -- to determine whether there was any change in her behavior. That was the purpose of that particular meeting.

Q Change vis-a-vis what?

A Change in her attitude toward the administration, its policies.

Q Over the course of the past week or over the course of the past six months or over what course of period?

A For the whole period of confinement. I wanted to make sure --

Q In other words, whether or not since February 3, 1974, there had been any change in her attitude?

A Right.

Q Did you reach a conclusion based on your conversation with Carol Crooks?

A I did.

Q What was the conclusion that you reached?

A There had been no change, no noticeable change.

Q What do you mean by that? What was her attitude?

A Well, frankly, I got absolutely nowhere. Carol wouldn't talk. She was incommunicado.

Q Did you ask her questions?

A I did. I tried to. I don't remember the question, but she in so many words said "This court was a joke," and "why wast my time? It is a farce."

Q Was that the same type of attitude that she exhibited at the previous conference the week before?

A Not really.

MR. LATIMER: Objection, your Honor. There is no testimony that this witness knew what happened the week before.

MR. KANTOR: I respectfully submit, your Honor, she sat at the conference on the 35d.

(Record read.)

THE COURT: Overruled.

Q What do you mean by "not really," was there a change or wasn't there?

A I think Carol was more vocal on the June meeting, and that is why that report has the wording it has in it. I was able to talk to her more, in other words, on the last meeting.

Q The June 3rd meeting?

A Right.

Q So she wasn't --

A She did voice her opinion, more or less, of the court and the procedures.

Q This report says that Carol was speaking with a smirk. What do you mean by that?

A Well, a half smile, as if it was a joke.

Q You said that she is contemptuous of the committee.

A I asked Carol to sit and she said she didn't want to sit. "Get it overwith," more or less.

Q Is that what you meant by contemptuous?

A Yes, of the court.

THE COURT: I can't hear your answer.

THE WITNESS: Yes.

THE COURT: Is it contemptuous to stand in one of those hearings if you are asked to sit?

THE WITNESS: No. I think it is customary to sit. Most people sit, most of the girls.

Q Can you tell me what the procedure was at the adjustment committee meeting on May 23? That was the first one. Exactly what happened?

A We reviewed reports, all of the reports since her stay? Seg. We read them and discussed them.

Q Among yourselves?

A Among ourselves, yes.

Q Was Carol there at that time?

A No, she wasn't.

Q Proceed.

A Then we had Carol in and again she was incommunicado. I couldn't talk to her.

Q Did you askher to explain any of the reports during the period she was in segregation?

A No, I didn't.

Q You made no attempt whatever?

A I can't remember exactly how it started, but she showed -- I mean, there was no change in her attitude

and remembering the fact that she didn't want to talk, she had expressed herself this way many times, so I saw no change and no need to try to draw her out further.

MR.KANTOR: I have nothing further.

CROSS-EXAMINATION

BY MR. LATIMER:

Q Lieutenant Cradle, on May 23, you were the chairman of the adjustment committee?

A Yes.

Q But in terms of rank, you were junior to Captain Woolley, is that correct?

A Right.

Q And you normally take orders during the course of your duties in the institution, you normally take orders fromCaptain Wooley, is that correct?

A Well, she is my ranking officer, and I process things up to her.

Q If she gives you an order, you obey that order, is that correct?

A Of course.

Q Insofar as any disciplinary or sanctions against officers or duties or whatnot, you would report to Captain Woolley, is that correct?

MR. KANTOR: Objection, your Honor. I can't

see the relevance of this.

THE COURT: Overruled.

Q Is that so?

A Phrase that question again.

Q In other words, in terms of military chain of command --

THE COURT: She has given you her chain of command. If you want to ask her a question about to whom she reports infractions, you may ask her.

Q Captain Woolley, if you disobeyed an order, a lawful order of your superiors, Captain Woolley would have the --

THE COURT: Oh, no, no, let's talk about the subject matter of this case, not about this witness disobeying an order. There is no evidence that this witness disobeyed any orders, and she is not on trial. The chain of command is known to the Court. I overruled the objection to your prior question. If you want to rephrase it so the witness understands it, she may answer it.

Q Do you report disciplinary infranctions to Captain Woolley?

A No.

Q To whom do you report them?

A We have the committee meeting, the adjustment

committee.

Q In terms of your duties as outside the adjustment committee, if you observe an infraction, whom do you report that infraction to?

THE COURT: An infraction by an inmate, isn't that so?

MR. LATIMER: Yes.

A I make out a form, a charge slip, on the person, myself.

Q Who does it go to?

A It goes to the deputy.

Q Does it go to Captain Woolley?

A No, it goes to the deputy.

MR. KANTOR: Objection, your Honor. The witness already answered the question.

THE COURT: Her answer can stand.

Q You sat on adjustment committees before May 23, haven't you?

A Yes.

Q Have you ever discussed the particular case with the administration before going into the adjustment committee room?

A With administration?

Q Yes, with the superintendent.

A You are speaking of any case now?

Q Yes. Other than Carol Crooks on May 23.

A We discussed it with anybody who has had dealings with the girl, with the inmate, to get -- come up with a fair opinion.

Q This is before you walk into the adjustment committee room?

A Sometimes, yes. Not in every case.

Q Did you know Miss Crooks before May 23?

A Yes.

Q Were you at all involved in the incident on February 3, 1974?

A I was off duty, but I was called in.

Q Did you participate in the investigation of that incident in any way ?

A Not much of an investigation. I read reports on it, mre or less.

Q Did you discuss that incident with the superintendent in and around February and March 1974?

A No, not that particular incident.

Q On June 3 you made the adjustment committee report, and you stated, among other things, that Miss Crooks' attitude was satisfactory, except that she stood there with a smile, is that correct?

A Do you have the report there? Could I see it?

Q I have a copy introduced in evidence.

THE COURT: What is the exhibit number?

MR. LATIMER: N, your Honor.

MR. KANTOR: It is not in evidence.

THE COURT: N for identification?

MR. KANTOR: Yes.

A Yes, that's the one I saw.

Q YOu did make the comment that her attitude was satisfactory?

A Right, and -- all right.

MR. LATIMER: I have no further questions.

REDIRECT EXAMINATION

BY MR. KANTOR:

Q Just one brief question. You said on February 3 you called into duty on February 3 of this year?

A Yes. I was called in. I was off duty.

Q Did you file a report?

A No, I didn't, because I wasn't directly involved. I wasn't there at the height of the incident.

Q And you had nothing to do with the superintendent's proceeding, did you?

A No.

MR. KANTOR: Nothing further, your Honor.

THE COURT: You are excused.

(Witness excused.)

MR. KANTOR: At this time I call Lieutenant Guenther who is in the witness room.

M A R Y J. G U E N T H E R, called as a witness by the defense, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. KANTOR:

Q Miss Guenther, by whom are you employed?

A New York State Department of Correct, Bedford Hills Correctional Facility.

Q In what capacity are you employed?

A I am a lieutenant.

Q Is that a correction lieutenant?

A Yes.

Q How long have you been a lieutenant?

A Since March 8, 1971.

Q Have you had occasion to serve on the adjustment committee?

A Yes, I have.

Q Are you now serving as chairman of the adjustment committee?

A Yes, I am.

Q How long have you been serving as chairman of the adjustment committee?

A Since June 3, 1974.

Q Did you serve on the adjustment committee then on June 6, 1974?

A Yes.

Q I show you now two pages which -- something called adjustment committee reappearance report and supplement to adjustment committee report and ask you if you have ever seen them before?

A Yes, I have.

Q Can you tell me where and under what circumstances?

A It was during a reappearance for Carol Crooks.

Q Did you prepare that report?

A Yes, I did.

MR. KANTOR: Your Honor, at this point I offer Defendants' Exhibit N for identification in evidence.

MR. LATIMER: No objection.

THE COURT: Received.

xxx (Defendants' Exhibit N was received in evidence.)

Q Did you sit on the adjustment committee on June 13, 1974?

A No.

Q What were the other dates of the adjustment committee that you sat on this month?

A It would be a week later than that, 21st, I believe, and the 26th.

Q On each of those occasions did Carol Crooks appear before you?

A Yes.

Q Did you have a discussion with Carol Crooks there and at that time?

A On the 21st we talked about her stay in segregation, in the wings. We discussed her attitude and referring to the incident back on February 3, into her feelings if this incident would happen again.

Q Did you reach a conclusion based on your discussion with Carol Crooks?

A Well, Carold told me that --

THE COURT: Speak up, please.

A (continuing) Carold told me that she didn't think it would happen again but that she didn't know. Our conclusion for the adjustment committee was that she be confined.

THE COURT: When was this conversation?

THE WITNESS: This was on the 21st of June.

Q Prior to that date, had you had any discussions

with any members of the administration concerning the intended appearance of Carol Crooks before the adjustment committee?

A No, I didn't.

Q Had you discussed Carol Crooks with other members of the adjustment committee before that date?

A No.

Q In other words, when Carol Crooks walked in on -- that was the first time you had any discussion about her, is that correct?

A No, I have to elaborate more on that.

Q Please do.

A After the committee met --

Q You have to speak up.

A After the committee met on the 6th, I spoke to the superintendent only on what I had done in the adjustment committee.

Q You spoke to the superintendent?

A That was after the committee had met.

Q What was the nature of the discussion between you and the superintendent on that day?

A It wasonly an evaluation of everybody that had been in, letting her know what happened.

Q In other words, you reported to the superintendent

upon the activities of the adjustment committee of that day, is that right?

A Afterwards, yes.

Q Did there come a time in the adjustment committee when there was a particular incident involving Carol Crooks?

A Could you elaborate on that, please?

THE COURT: Was June 21st the last appearance?

THE WITNESS: No, June 26th.

Q I show you now Defendants' Exhibits B, C, D and E for identification and ask if you have ever seen any of them before?

A Yes.

Q Will you tell me where and under what circumstances?

A They were turned in for the adjustment committee by the officers in the special housing unit.

Q You will note at the top of each of those there is a notation "duplicate." So actually you never saw copies of those before, is that correct?

A That's right.

Q You saw the originals?

A Yes, I saw the originals.

Q Do you still have custody of the originals?

A No.

Q Can you tell me what happened?

A When Carol was before the adjustment committee, she picked them up off the desk and refused to give them back.

THE COURT: How were you able to create the duplicates, then?

THE WITNESS: Ihad t ask the officers that had written them originally to rewrite them.

THE COURT: From memory?

THE WITNESS: No, they had notes.

THE COURT: Where are the originals now?

MR. KANTOR: Ask the plaintiff.

MR. LATIMER: I don't know, your Honor.

THE COURT: I can't hear you.

MR. LATIMER: I don't know.

THE COURT: Are they available?

MR. LATIMER: She doesn't know whether they are available or not of her own knowledge.

THE COURT: Are they in the possession of the plaintif or her counsel at this time?

MR. LATIMER: They are not in her possession and they are not in my possession, no, your Honor.

MR. KANTOR: Your Honor, in light of that I offer now in evidence Defendants' Exhibits B, C, D and E

for identification. I show it to counsel.

THE COURT: When these documents were received previously, I had understood that the genuineness was not in dispute or their admissibility, that they were taken subject to connection. The way I viewed this matter, I assumed that someone would testify that they rely on these prior reports, that a board of adjustment committee relied on them or perhaps the superintendent reviewed them and relied on them.

I am not certain that that precisely is what the record shows here. If they did, I think the reports would be admissible. I think the reports would also be admissible insofar as concerns the plaintiff's claims to show precisely what process was followed here so that the Court can determine whether it is due process.

MR. KANTOR: I submit, your Honor, that --

MR. LATIMER: These are infraction reports, your Honor. I would submit that the infraction reports themselves show nothing about the process, due or otherwise, that was followed in the adjustment committee. I would submit that the adjustment committee report, if there was an adjustment committee about those things, is the proper form. If we are going to go into the merits of those things, there are three women who I will bring down, I would

ask the Court to bring down for rebuttal.

THE COURT: Hand me the exhibits at this time. Which ones are not in evidence?

THE CLERK: The only one I don't have in evidence is E.

THE COURT: The Court's records indicate the B, C and D are in evidence.

MR. KANTOR: I offer E.

THE COURT: You are offering E at this time. Am I correct in understanding that each of these resulted in or initiated procedures to cause an appearance of the plaintiff before the adjustment committee?

MR. KANTOR: Yes, your Honor. That is the next thing I am proceeding to.

THE COURT: What?

MR. KANTOR: That is the next thing that I am proceeding to.

THE COURT: Why aren't they admissible, Mr. Latimer? These are the documents which, as the Court understands it, initiate the adjustment committee procedures. You are bringing before this Court for review in accordance with constitutional standards the entire proceedings followed by the adjustment committee in your client's case, because the conclusion is suggested that they will continue to do in

the future as they have done in the past.

Isn't that so?

MR. LATIMER: That is so, your Honor.

THE COURT: Why aren't they admissible?

MR. LATIMER: As long as he is going to connect it up with an adjustment committee proceeding --

THE COURT: I will take B, C, D and E in evidence, on the representation that these were the documents which initiated four separate appearances by this plaintiff before the adjustment committee, is that correct?

MR. KANTOR: I believe it was one appearance before the adjustment committee, your Honor, but all four were dealt with.

(Defendants' Exhibit E was received in evidence.)

THE COURT: Which is the appearance that these documents initiated? 21st of June?

MR. KANTOR: No, it would be the 24th of June, your Honor.

(Defendants' Exhibit O was marked for identification.)

BY MR. KANTOR:

Q At this point I show you Defendants' Exhibit O for identification and ask you to describe what that is.

A This was the adjustment committee hearing on the four infractions that you showed me just a -- just prior.

MR. LATIMER: I can't hear the witness.

THE COURT: I have had to ask every witness in this case, please speak up.

A This is the adjustment committee hearing -- findings on the four infraction sheets that were just entered into exhibit.

Q You mean these?

A The ones you showed me.

Q Defendants' Exhibits B, C, D and E?

A Right.

MR. KANTOR: At this juncture I offer Defendants' Exhibit O for identification. I show it to counsel.

MR. LATIMER: No objection.

THE COURT: Received.

xxx (Defendants' Exhibit O was received in evidence.)

Q Lieutenant Guenther, you sat on that adjustment committee on 6/24/74, did you not?

A That is correct.

Q You were the chairman of that adjustment committee?

A Yes.

Q Did you have a conversation with Carol Crooks on that day and at that time?

A Yes.

Q That conversation pertained to the infraction slips, Exhibits B, C, D and E?

A That's correct.

Q Can you tell us about that conversation?

A I read -- when Carol came in, I told her that I have these misbehavior reports on her. I proceeded to read them. When I finished, she asked me if that was all, and I said yes. "Do you have anything to say?" She grabged the infraction sheets from in front of me and went out the door saying "Use the duplicates."

Q Were infraction slips -- I should say this is prior to June 28 of this year or June 26 of this year, are infraction slips prior to that time made available to inmates?

A I beg your pardon?

Q Were infraction slips at the time of this meeting made available to inmates?

A No.

Q Have they ever been, prior to that meeting?

A Not to my knowledge.

Q Were inmates permitted to take papers from the adjustment committee?

A No.

Q Did you explain to Carol that she could not have the papers?

A I asked her to give them back.

Q What did she say?

A She refused. I sent Sergeant Rivenberg down to ask her, hoping that she had thought it over a little while, and she said, "Excuse me," and shut her door.

Q The infraction sheets themselves dealt with an incident -- dealt with what?

THE COURT: They speak for themselves. They are in evidence.

Q Did you make a determination in the course of this adjustment committee meeting whether the infraction slips in and of themselves stated an incident of inmate misbehavior or violation of rule?

A The committee made a decision to --

Q What was that decision?

A -- continue Carol in special housing.

Q Was that because she had violated specific rules?

A It was because she violated specific rules but also because her attitude was unchanged and this went to prove it.

THE COURT: Did the determination have anything

to do with grabbing the infraction slips? I think that is what counsel is asking you.

THE WITNESS: I don't believe so.

Q Have you sat on any adjustment committee adjudicating the question of whether or not it was proper for her to take the infraction slips?

A No.

Q Are you sitting on the adjustment committee now or this week and next week and the week after?

A This week.

Q Is it your understanding that you are going to sit on the adjustment committee concerning Carol's taking of the infraction slips?

A No.

Q Why not?

A I think it would be kind of unfair since I wrote the infraction.

MR. KANTOR: I have no further questions.

THE COURT: Is there any cross-examination?

MR. LATIMER: Yes, your Honor.

CROSS-EXAMINATION

BY MR. LATIMER:

Q You have already testified that Carol, Miss Crooks, did not see the infraction slips before she went

into the adjustment committee room, is that correct?

A That is correct.

Q Had you or anyone else advised her of the charges against her before she went into the room on June 24th?

MR. KANTOR: Objection, your Honor. It calls for --

Q Had you advised her of the charges before she went into the adjustment committee room on the 24th?

A No.

Q Do you know if she was advised of the charges before she went into the room on the 24th?

A I wouldn't know.

Q Did you in the adjustment committee room itself, did you advise her of the charges?

A Yes. I read them to her.

Q Were there other inmates involved in the incident that led up to the adjustment committee meeting on June 24th?

A Yes.

Q How many other inmates were involved?

A SEven.

MR. KANTOR: Your Honor, I can't see the relevance of this.

THE COURT: Let the man make his record. Let's

get along with it.

Objection overruled.

Q How many inmates were involved in that?

THE COURT: Seven, she said. Let's go.

Q WEre all of those inmates brought to the adjustment committee at that time?

A No.

THE COURT: WEre all of these inmates in segregation at the time of the infraction, these other six?

THE WITNESS: Some of them, they were all involved, and a couple, they were just Carol's, just her own.

THE COURT: The question I asked was whether all seven were inmates of the segregated wing.

THE WITNESS: I am sorry. Yes, they were. EXcuse me, your Honor. There may have been eight. It is hard to remember.

THE COURT: Please speak up nice and loud.

Q At any adjustment committee meeting that you sat on at which Carol was present, did you ever orally advise her that her reports to that date had been good or satisfactory, words to that effect?

A Yes, i did.

Q Had her reports indeed been good, satisfactory?

A The verbal reports that I was getting from the

officers had been satisfactory, yes, at this time.

Q So that she was behaving herself at that time?

A Yes.

MR. LATIMER: I have no further questions of this witness, your Honor.

THE COURT: Anything else?

MR. KANTOR: No further questions, your Honor.

THE COURT: You may step down.

(Witness excused.)

MR. KANTOR: That is the defendants' case, your Honor.

THE COURT: Defendants rest?

MR. KANTOR: Yes.

MR. LATIMER: May I have a moment?

THE COURT: Yes. The Court will take a five-minute recess.

(Recess.)

(In the robing room.)

MR. KANTOR: I asked for this conference in chambers. Yesterday afternoon your Honor inquired of me as to what was going to happen, if something practical could be worked out concerning Carol Crooks, in light of this new decision.

I at that point said that I couldn't make any statement without consulting with the Department of Correctional Services.

I can now state that I have consulted with the Department of Correctional Services and they have -- the State is going to abide, of course, by the decision of the Supreme Court in the Wolff case.

Any future determinations concerning segregation or loss of good time are going to be made in accordance with the provisions of that decision and holdings.

THE COURT: Did you want to say anything?

MR. LATIMER: I would still request that in light of the past procedures and the record that has been made for the past two days, that Miss Crooks be released from segregation pending any other disciplinary action that may occur, taken in accordance with --

THE COURT: I am not inclined to comment on that until I have the case fully submitted. You asked for

a recess so you could consult with the lady to see if you have any more evidence.

MR. LATIMER: I have approximately three questions, three short questions, concerning -- to rebut a little bit of Miss Guenther's testimony.

THE COURT: All right. If we complete today, as I view this case -- I will take up with your motions immediately after those three questions, but I think that the case will require me to make formal findings of fact and to write a memorandum decision, and I assume that all of you would like to have an opportunity to review the transcript and to brief it, very briefly and concisely, following your reading of the Wolff case.

Of course, the Wolff case has left some interstices, still. I think some of the doctrine of Sostre has been wiped out by Wolff, but I think also that there is at least one ambiguous footnote in the Wolff case which this Court may have to deal with, and I think it would be much better if I dealt with it based on a full submission, so that any of you who are dissatisfied with it may seek appellate review against a full background and not just some simplistic approach to the thing, which I wouldn't be willing to do.

So I think you will have to have that in your

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mind as to what your schedules will be.

Of course, I would want to do it against a transcript where I could be absolutely certain of the weight to be given to some of this evidence.

Have you ordered the transcript?

MR. KANTOR: I discussed it with the reporter and I indicated I would order it on an expedited basis.

MR. LATIMER: I have also had that discussion.

THE COURT: Off the record.

(Discussion off the record.)

THE COURT: After the record is complete, I will take up what if any provisional relief ought to be granted, but, in any event, I propose to make formal post-trial findings and conclusions, probably write a short memorandum opinion, and in order to permit me to do that promptly, I am asking each of you to exchange your post-trial memoranda and deliver copies to my chambers before the close of business on July 15.

Will you be able to accommodate to that?

MR. LATIMER: Yes, your Honor.

MR. KANTOR: Yes, your Honor.

THE COURT: Let's go out and get the three questions, then.

(In open court.)

MR. LATIMER: At this time, your Honor, the plaintiff would recall the plaintiff to the stand.

C A R O L C R O O K S, the plaintiff, having been previously sworn, was recalled and testified further as follows:

THE COURT: You are reminded you are still under oath in this proceeding.

DIRECT EXAMINATION

BY MR. LATIMER:

Q Have you heard Lieutenant Guenther's testimony?

A Yes.

Q Did you hear her say that you would go at some time before an adjustment committee for the incident where you took the papers from the adjustment committee desk?

A No, sir.

Q Did you hear her say that you would be subjected to something for taking those papers?

A She said nothing.

Q Lieutenant Guenther, just now, on the stand. Did you hear her on the stand say that?

A Yes, I did.

Q Had you ever been advised before this very moment, today, that any action was contemplated when you took those papers?

A No, sir.

MR. LATIMER: I have no further questions.

CROSS-EXAMINATION

BY MR. KANTOR:

Q Were you told when you took those papers that you were permitted to take those papers?

A No, sir.

Q Were you asked when you took those papers to give them back?

A At what particular time was I asked?

Q Any particular time.

A At nighttime, in the evening-time, I was asked.

Q Were you told at the adjustment committee that you were to give those papers back?

A The adjustment clinic said nothing to me.

Q They said nothing to you?

A Nothing.

THE COURT: They just let you take these papers?

THE WITNESS: Nobody said nothing in the whole room.

THE COURT: When you took these papers and walked out?

THE WITNESS: Yes, sir.

Q When you were told to give them back and you were

refused, did you have some inkling that somebody might happen as a result of that?

MR. LATIMER: Objection.

MR. KANTOR: I think it is a proper question.

THE COURT: It is probably proper in view of the prior question. Permissible cross-examination.

Q You had some inkling, didn't you, that some action was going to be taken?

A The only action was taken, I was locked another extra day than anybody else, without coming out at all, without a shower.

THE COURT: Because of taking the papers?

THE WITNESS: That's from what I gather, but nobody told me anything. I was punitive lock for five days.

Q You weren't told, were you, that you were being kept locked 24 hours because you took those papers, were you?

A I only seen Sergeant Rivenberg.

Q Answer the question. You weren't told that?

A No.

Q Did you have some idea that some action would be taken as a result of your taking those papers from the adjustment committee?

A No.

THE COURT: Did you know that it constituted

misconduct to take the papers?

THE WITNESS: I never did it before, your Honor, so I didn't know anything about it.

Q You know it constituted misconduct not to return the papers or comply with an order of the correction officer?

A Would you repeat the question again, please?

THE COURT: No, don't repeat the question.

Q Did you know that it constituted misconduct to refuse to return the papers when asked for them or to disobey the direction of a correction officer or a member of the staff?

A Yes.

Q So that when you refused to return the papers when somebody asked you for them, you had an inkling that that constituted misconduct, is that right?

A Yes.

MR. KANTOR: I have no further questions.

REDIRECT EXAMINATION

BY MR. LATIMER:

Q Just one question. But you were never advised by any of the administration that any adjustment committee or any other proceeding would be taken on account of that incident?

A No.

MR. LATIMER: No further questions.

THE COURT: Were you asked to see a psychiatrist up there or psychologist at any time?

THE WITNESS: No, not even when I was in the observation for 30 days.

THE COURT: Did you refuse to see a psychiatrist or a psychologist?

THE WITNESS: No, they never sent one down.

THE COURT: I thought there was some testimony to that effect.

THE COURT: If they sent you to a psychiatrist, would you go?

THE WITNESS: In the State up there?

THE COURT: Yes.

THE WITNESS: I would see one down here, but not in the State.

THE COURT: Anything further? You may step down.

(Witness excused.)

MR. LATIMER: At this time I move for both preliminary and permanent injunctive relief based on the Wolff case and on the testimony adduced these last two days.

There is ample testimony that notice of the

charges are not given to inmates, that written dispositions are not given to prisoners. There is a demonstrated pattern of almost arbitrary -- not "almost," but arbitrary behavior at these adjustment committee sittings. The inmates don't really know, and I think that was borne out very well, the inmates don't really know what they have to contend with when they walk into the adjustment committee meetings, and they don't really know, other than vague generalities, what it is that they are being kept in segregation for when they leave the adjustment committee.

This is nowhere borne out -- better than borne out then by the fact that in several of the reports submitted in evidence in this case, the inmate's attitude is listed as good or satisfactory, and yet she is continued in segregation.

We contend that Wolff in essence codifies existing due process procedures and that the conduct of the adjustment committee to date with respect to Miss Crooks and as pattern violates those elementary, basic due process rights.

I would also submit that provisional relief is necessary, the Court has indicated it would establish a briefing schedule which will take several days to complete, and then the Court will decide the case.

Confinement to segregation itself is an irreparable injury, the time locked in, 23 hours a day, can never be retrieved by the inmate. The opportunity to participate in programs on the campus and lead a normal life within the confines of the prison, the deprivation of that for -- now it is going on 90, almost 100 days, is totally lost.

There is absolutely no way in the world to recoup that.

I would ask that the plaintiff, Miss Crooks, be released from punitive segregation, restored to the general population, pending a final determination of this action on the merits, based on Wolff vs. McDonnell, Sostre and the cases cited in the memorandum submitted several weeks ago.

MR. KANTOR: At this juncture, your Honor, defendant respectfully moves and renews the motion made at the close of the plaintiff's case, that the complaint be dismissed for failure to prove a prima facie case. The defendants have conceded that there was an adjustment committee -- strike that -- a superintendent's proceeding which resulted from several disciplines.

There was a 60-day confinement in punitive segregation. There was loss of six months good time. There

was referral to the adjustment committee.

THE COURT: Do I gather, and I don't mean to interrupt the thread of your argument, but do I understand that you concede or take the position on this record that 30 days additional to the totality of the superintendent's proceeding is all that the adjustment committee could impose?

MR. KANTOR: Without review by the Department of Correctional Services, without leave by the superintendent and the Commissioner, your Honor.

THE COURT: Is it your position on this record that this plaintiff is presently in segregation because of the February 3, incident?

MR. KANTOR: No, your Honor, it isn't. The position of the defendants is that she is in segregation because she has not yet evinced a sincere desire to comport herself with the rules and regulations of the Department. She has shown a marked lack of respect for correction staff.

This has been clearly demonstrated. She has shown no great desire to reform or no demonstrable desire to reform, and, God knows, we in the State have the responsibility for the protection of inmates and the protection of its own employees.

Carol put four in the hospital. I don't want another four in the hospital.

MR. LATIMER: I would object to that last comment about putting people in the hospital, your Honor.

THE COURT: I am taking it as argument, not evidence, Mr. Latimer.

MR. KANTOR: The plaintiff would have this Court rely exclusively or almost exclusively on a decision in the Supreme Court dated June 26 in Wolff against McDonnell. But clearly the Supreme Court by its own terms did not make Wolff retroactive.

THE COURT: I couldn't release her retroactively, could I?

MR. KANTOR: No, your Honor, and I submit, your Honor, you can't release her until there is some demonstration that we are not going to comply with Wolff.

THE COURT: As I understand it, all of the existing determinations expired either yesterday or tomorrow, isn't that so?

MR. KANTOR: That is correct, your Honor.

THE COURT: Which date is it?

MR. KANTOR: On Thursday, your Honor.

THE COURT: The 4th of July.

MR. KANTOR: We work the 4th of July.

THE COURT: I understand.

MR. KANTOR: Perhaps it will be in a better

state for Carol as well, but I can't make any promises. In light of that, your Honor, I think that little will be served --

MR. LATIMER: I object to the last comment.

THE COURT: Come on, gentlemen. It has been a lengthy trial.

MR. KANTOR: I withdraw it.

THE COURT: I don't treat these comments as affecting the outcome of the litigation in any way.

MR. KANTOR: In large measure, your Honor, I think that any irreparable injury to the inmate at this stage is minor compared to the spectre of the possibility of what would happen if she were released willy-nilly. Moreover, moremover, I think it would work more of an injustice on everybody if this Court's process were to order her release, subject to another adjustment committee proceeding comporting with Wolff, and the adjustment committee decides that she is still not yet evincing a sincere desire to comport with the requirements of the Department of Correctional Services and the institution.

And therefore places her back in seg, which, of course, they would have a right to do. Therefore, your Honor, I urge two things: I urge, first, that there has been no violation of due process as Wolff vs. McDonnell

is only prospective.

Second, I urge that there is no showing of irreparable injury to plaintiff or there is an insufficient showing to warrant the Court's issue of the extraordinary remedy of a preliminary injunction.

MR. LATIMER: Your Honor, may I make just one or two comments? I would submit, and based on the testimony heard today that "evince a sincere desire to conduct herself in accordance with the rules of the facility," that is vague and it is a standard that is so subjective that it is virtually impossible for any individual to know what another individual means by that.

The plaintiff did not contend that Wolff be applied retroactively. We contend that on the previously existing authority and the cases cited in the memoranda that were submitted to this Court there are sufficient grounds in law to find that due process violations have occurred between May 23 and today and that obviously after June 26 we are governed by Wolff, but there is sufficient precedent before that.

Moreover, I think that it is -- the argument is an absurdity that to release her now and then wait to see another adjustment committee report is so speculative so as to be a total non-sequitur. Again I would reiterate

that confinement in segregation and the time and privileges lost just can never be made up.

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THE COURT: Gentlemen, I am going to make some preliminary findings with respect to the motion for a preliminary injunction. These findings made are not binding upon the Court with respect to the final judgment to be entered herein. I have already indicated to you attorneys that I expect to make detailed findings of fact and conclusions of law after I have been able to review the trial transcript and after Ihave had your post-trial briefs.

But, I believe that there is a basis here for a limited order, which I am now about to impose here, and I am making the following findings with respect to the motion for preliminary injunction. I may or may not adhere fully to all of these findings when I make a final judgment in the case.

I do find: that the Court has subject matter jurisdiction here and has jurisdiction over the person of the parties; that the Court has jurisdiction under Section 1983 of Title 42 and those provisions of Title 28 incorporating that subject matter jurisdiction; and that there is a procedural due process issue in this case; and that the plaintiff here seeks only injunctive relief and prospective relief as to which the Court has the power on a proper showing to grant either injunctive relief or declaratory relief, the Court being of the opinion that the State officials will honor their undertaking to this Court, that in all future proceedings

they will comply not only with their own rules and regulations and statutes, but they will comply with the due process requirements imposed prospectively by the case of Wolff v. McDonnell, decided June 26, 1974.

The Court finds that the plaintiff shows a reasonable probability of success in that she will be entitled to some injunctive relief or alternatively some declaratory relief, based on the facts proved before me, at the conclusion of the case, and that she does show a clear threat of irreparable damage in that any person deprived even of the minimal liberties to associate with the rest of the prison population is deprived in such a manner as to be irreparably damaged. These criteria for a preliminary injunction do exist and are satisfied in this case.

I specifically refrain from making any finding as to whether the defendants did or did not act in good faith in their proceedings with respect to this plaintiff prior to the commencement of the action. That issue is specifically reserved by me for determination on the entire record and after I have had an opportunity to review the file.

I also find that to the extent that they unwittingly followed the rule of Sostre, which was applicable in this Circuit, and had no reason to anticipate the Wolff decision prior to the date it was rendered, that to the extent that the

procedural due process surrounding the Committee on Adjustment failed to comply with these new criteria, that is certainly not a fault of the defendants and no basis for any inference adverse to them.

I find that the plaintiff is and was entitled to appear before a Committee on Adjustment, the members of which were impartial, to the extent that no member of the Board may participate in the case where he or she has been the complaining person or has been a reviewing officer or an investigating officer or a witness or the person who initiated the proceedings.

I find that it is inappropriate and inconsistent with procedural due process for members of the Committee on Adjustment to discuss issues arising out of a claimed infraction or act of misconduct with other administration members or superior officers in advance of the hearing. However, I believe that they may discuss it afterwards if they are seeking data or information upon which to impose such disposition as may be appropriate.

In other words, it is perfectly all right in my view to discuss it after they have heard the inmate, and resolved the factual issues but not before.

The plaintiff is entitled to an impartial hearing, and the Court directs, therefore, that in any Committee on

Adjustment proceedings henceforth held. In addition to complying with all of the provisions required by the rules of the Department of Correction and also by the Wolff case, this plaintiff is entitled to appear before a Committee consisting of impartial persons who have not had prior relationships of any kind with proceedings beginning in February, 1974. Of course, she will be entitled to 24-hour notice of any such hearing.

I do not find that the plaintiff here has any right to counsel or the aid of a fellow inmate as counsel because it is clear that she is not illiterate, and in fact she is engaged in college-level study, and her appearance before me convinces me that she is articulate and understanding, and that she is capable of understanding the type of case which has been involved here.

Any punitive segregation may be based on objective facts only and misconduct. The Court includes within the definition of objective facts the presence of the lack of a genuine intention to cooperate with the administration. It also includes the presence of an intent to intimidate other inmates or correctional officers or an intent to engage in assaultive behavior or an intent to conduct oneself in a manner contemptuous of the administration.

However, I reserve for further determination in

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connection with the final judgment the question of whether these charges are sufficiently precise or whether they are too vague. But, for the purposes of this preliminary order, those items may, if objectively evidenced to an impartial Adjustment Committee, proceeding fully in accordance with the rules laid down in the Wolff case, be a basis for punitive segregation.

I believe in this case there has been some confusion between segregation resulting from an act of misconduct and segregation which is non-punitive. While some of the witnesses described the segregation in this case as intended to be rehabilitative or to assist in adjustment, I think that we are engaging in shifting nomenclature when we talk in this fashion, because if an act of misconduct triggers the deprivation of privileges or segregation, that can only be characterized as punitive.

I distinguish that from administrative segregation. I think that there is a place in the system for segregation which is purely administrative. I think the defendants may have confused the problem in this case by the fact that elements of misconduct were present and also elements not involving misconduct but rather a threat that the presence in the general prison population of this plaintiff might be disruptive or might cause difficulties or assaults to occur.

The defendants had a reasonable basis for reaching

that conclusion because the record indicates that this plaintiff was previously convicted of an assault on a correction officer, apparently committed an assault on a correction officer in this Institution for which the Court understands a criminal indictment is presently outstanding in the Westchester County Supreme Court, and they may well have had reason to believe that administrative segregation was essential to avoid a future assault on an officer.

If the administration reached this conclusion objectively, I do not believe there is anything to prevent them from having a non-punitive program of segregation. But, apparently, there is no such program available at Bedford Hills Correctional Facility, and, certainly, if there were such a program available, anyone assigned to such non-punitive segregation would be entitled to every liberty and privilege which could possibly be made available, other than mixing in with the general prison population.

Here, apparently, anyone so situated was denied privileges to the same extent as a person who had been assigned to segregation as a result of an Adjustment Committee report based on an incident or act of misconduct.

So, I direct that in the event the administration of the Institution determines, pendente lite, that this plaintiff must be kept away from the general prison population,

that they do so based on an objective determination by an impartial official and that such non-punitive segregation must be so calculated as to grant her every liberty or privilege or benefit which can be confered. It cannot be on the same basis as punitive segregation.

It is unfortunate that there is only one institution to which this plaintiff apparently can be assigned. The Court cannot do anything about that. That is a separate problem.

The Court cannot anticipate whether this plaintiff is prepared to rejoin the population or whether she will show contrition or will show no further contempt for the administration and go peacably in to the population and not assault anybody.

The Court is unwilling to direct that she be released forthwith because the Court believes that at least for the purposes of provisional relief in this case, that is a matter for the authorities of the Institution in the first instance, so long as they reach their conclusion in an impartial way and grant the plaintiff full procedural due process.

Any proceedings of the Adjustment Committee or of the Superintendent which are inconsistent with the directions which I have just made on this record or which are inconsistent with the mandate of the Wolff case are hereby enjoined,

and the defendants and their servants and their agents, anyone having notice of this order, are restrained and enjoined from doing any such thing.

I find no necessity for any bond in support of the provisional relief granted today, and I believe that I have covered all of the area as to which I consider this plaintiff has showed a clear entitlement to provisional relief at this time.

The final judgment which will be entered here and the formal findings andconclusions after trial may be somewhat different and may grant further or additional or different relief.

Of course, I reserve jurisdiction to grant such a final order.

If there is anything unclear about the findings and conclusions I have just stated with respect to the provisional relief granted, or if there is anything unclear about the scope or extent of the relief granted, or of the relief which the Court has not granted, I will entertain any application by counsel at this time.

MR. IATIMER: Your Honor, just for clarification, am I to understand that Miss Crooks will remain in segregation but she is not to be locked in 23 hours a day --

THE COURT: Miss Crooks will remain in segregation

until July 4 under the existing order, because the Court believes that the existing order, at least colorably, is in compliance with the procedures of Wolff or it is preserved by the non-retroactivity of Wolff. However, if she is to be kept in punitive segregation for any period of time following that date, it can only be after complying with the directives I have previously made.

I am not directing her forthwith release, but I point out to you that July 4 is the day after tomorrow, so that gives them some time in which they may either adjust their procedures to comply or seek a stay by the Court of Appeals.

MR. LATIMER: So that if nothing happens, if the defendants do nothing by July 4, she is to be released from segregation?

THE COURT: I think that follows. In the absence of a stay by the Court of Appeals. This is an appealable order which I am now making. It is being so ordered on this trial record. I would ordinarily have given them a two-day stay in any event so they could seek such relief, but it is unnecessary here because the prior determination does not expire until the 4th, and Mr. Justice White has very carefully provided in the Wolff decision that the directions therein made are not retroactive.

There is an extent to which deefendants apparently did not comply with the prior case law, but I think that there the probability of success is somewhat less balanced or balances somewhat less in the plaintiff's favor. For that reason, I am not directing her release forthwith.

I think that there has been a combined approach to this matter, they found the plaintiff guilty of misconduct from time to time and they have made findings concerning her lack of intention to cooperate, but I think also they have included in their deliberations, the Adjustment Committee has, some fear of placing her in the general prison population because she might assault a correction officer again in view of her prior history of having done so or having allegedly done so. That is a different problem, and you cannot have punitive segregation for that.

It may be possible to have administrative segregation, but in such an event a person who is administratively segregated ought to have every possible privilege, at least certainly freedom of the corridor, but that is a question the Court cannot decide at this time.

Do you want to be heard?

MR. KANTOR: Just briefly, your Honor. I want to ascertain this so my clients and I do not go in violation of the Court order. Am I to understand that between now and

July 4 we may keep in seg -- if on July 4 we determine based on so much objective criteria that Carol still poses a threat, while we cannot keep her in punitive segregation without a full Wolff hearing, we may keep her in administrative segregation, which would be allowing her at least the freedom of the corridor, probably canteen and whatever else would be humanly possible in segregation?

THE COURT: She should have all of the privileges-- if you have administrative segregation imposed, a program should be developed which would give such a person so segregated every privilege except the unsupervised mingling with the general prison population.

But, the Court cannot attempt to set the details for that. The Court assumes that at least, pendente lite, the parties will behave in good faith.

I am going to make a strong recommendation that the plaintiff seek psychiatric or psychological guidance. I think it has to be done in the institution. I do not think this Court can direct it. I think you have a situation which amounts to deadlock in this case where apparently the officials would like the plaintiff to show a genuine intention to cooperate and an attitude of contrition, and the plaintiff simply does not want to do that; so they are at loggerheads.

While the Court is concerned with the due process,

the procedural due process of this case, the Court recognizes that if the parties stay at loggerheads, and if the administration complies with all of the procedural due process, it is very likely that one way or another this plaintiff will to be a subject of relatively continuous action by the Adjustment Committee.

The best thing that can be done is to try to reconcile that problem through the aid of a psychologist or a psychiatrist or some other impartial person engaged in the correctional field. The Court cannot compel that.

All right, anything further?

MR. LATIMER: Just a collateral matter, your Honor. My client has expressed to me a fear of recrimination upon return to Bedford Hills. In fact, she asked me to ask the Court to keep her in Rikers Island until --

THE COURT: I have no way that I could make -- I have no basis on this record to make any such direction. I could see that there would be a great deal of wisdom if she went down to the Westchester County Jail pending trial of her indictment, which I assume would be very shortly, but I am not in a position where I can make that direction. I have no jurisdictional basis for making it, and it would be an untoward interference.

What we have here is we have a bona fide case

involving serious issues of due process of a procedural nature. But the Court is aware that after all of these questions are resolved, and even if they are resolved fully in your client's favor, your client still has a problem. She has 15 years to serve there, she has the possibility of being convicted on this new indictment, and if they sentence her to additional time, the only place she can serve it is at Bedford Hills.

So this case cries out for a little bit of interpersonal adjustment here. It ought to be done. I urge you, Mr. Latimer, as an officer of this Court, to counsel with your client about seeing the psychologist with an open mind or seeing what can be done.

If there were another place to transfer her, I am sure the defendants would be happy to do it. But I do not think they have any basis and I have no jurisdictional foundation to make that order. I have no basis to make a finding that there will be recrimination. I gather that they have a real fear about letting her out in to the general prison population while she remains hostile, and there is some evidence that she has been hostile.

All right, decision reserved as to all other matters, and the Court retains jurisdiction.

So ordered.

(Court adjourned.)

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ORIGINAL

FILED U.S. DISTRICT COURT S.D. OF N.Y. OCT 1 10 42 AM '74

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAROL CROOKS,

Plaintiff,

-against-

JANICE WARNE, individually and as Warden of the Bedford Hills Correctional Facility, CAPTAIN WOOLEY, individually and in her capacity as Captain at the Bedford Hills Correctional Facility, LIEUTENANT CRATTLE, individually and in her capacity as Lieutenant at the Bedford Hills Correctional Facility,

Defendants.

74 Civ. 2351-CLB

FINDINGS AND CONCLUSIONS

#41247

MICROFILM OCT 1 1974

Brieant, J.

In this civil rights action, filed May 31, 1974, pursuant to 42 U.S.C. §1983 and 28 U.S.C. §1343(3), the Court is called upon to construe the procedures relating to placing prisoners in segregation at New York State's prison for women, Bedford Hills Correctional Facility. After this action was filed, and on June 26, 1974, the Supreme Court decided Wolff v. McDonnell, ____U.S. ____, 42 U.S.L.W. 5190.

On June 3, 1974, by order to show cause issued on May 31, 1974, plaintiff sought a preliminary injunction. At the direction of the Court, trial on the merits was advanced and consolidated with the preliminary injunction hearing, and held on July 1 and 2, 1974. A preliminary injunction was issued at the close of trial.[1/]

Plaintiff, Carol Crooks, is an inmate of the Bedford Hills Correctional Facility, presently serving various concurrent terms, the longest of which is an indeterminate sentence of zero to fifteen years. She has been convicted of manslaughter, attempted homicide, assault and sale of dangerous drugs. Since March 8, 1974, and at the time of trial, she was confined in the prison's segregation wing as the result of Superintendents Proceedings (7 N.Y.C.R.R. §253), growing out of a February 3, 1974 incident involving an alleged assault committed within the prison upon four correctional officers.

After the trial, and on September 1, 1974, Miss Crooks was transferred and reassigned to a newly activated state facility at Fishkill, New York. In addition, she is under indictment in Westchester County for the assault, and will be

housed in Westchester County Jail pending completion of that trial. These circumstances which have arisen subsequent to trial do not render the litigation moot, nor do defendants so claim. The state officials may reassign plaintiff to Bedford Hills again at any time, and if reassigned, it is likely she will become subject to further disciplinary proceedings.

On the basis of the March Superintendent's Proceeding, plaintiff was sentenced to sixty days in segregation, six months loss of good time, and future referral to the prison's Adjustment Committee (7 N.Y.C.R.R. §252). Due to an intervening sojourn at Westchester County Jail, her sixty days imposition of segregation did not expire until May 23, 1974.

The matters in controversy herein concern events occurring on or after May 23, 1974. Declaratory and injunctive relief is sought, but there is no demand for damages. Plaintiff contends that her continued confinement in segregation since the expiration of the sixty days imposed by the Superintendent's Proceeding, effected by direction of the prison's Adjustment Committee, is invalid insofar as it was accomplished without all of the procedural safeguards required by the Supreme Court in

Wolff v. McDonnell, supra. As noted, this decision was rendered on June 26, 1974, after her continued confinement was directed by the Adjustment Committee.

At the time of trial, Bedford Hills was the only correctional facility maintained for sane women in New York State. (Women serving sentences who are subsequently found to be mentally ill may be committed to Matteawan State Hospital, Corr. Law §400, et seq.) Since trial, limited facilities have been opened at Fishkill as heretofore noted. As described by Superintendent Warne, Bedford Hills is a medium security, as contrasted with a maximum security, institution. There are no wall towers, and movement within the institution is relatively free, unlike such maximum security facilities for men as Green Haven, Auburn, Attica and Clinton Correctional Facilities. New York has no equivalent facilities for women, and all sorts of female prisoners are confined at Bedford Hills, without regard to their relative incorrigibility, their disruptiveness, or whether they are serving short or long terms, and without regard to the nature of their prior felonious activity. In dealing with so diverse a prison population, it is manifest that a

variety of disciplinary procedures and facilities are necessarily employed by the correctional personnel to meet various exigencies.

Surprisingly, it appears that, while there exist a variety of disciplinary procedures available in dealing with the more recalcitrant inmates, such as the Adjustment Committee and Superintendent's Proceedings, there exists only one facility euphemistically denominated "Special Housing" wherein all disciplined inmates are kept under the same conditions of punitive segregation, without regard to the diverse causes and commitment procedures whereby they may be placed there, or the nature of the misconduct involved.

According to Superintendent Warne's testimony, all inmates requiring special custodial confinement are placed in Special Housing, whose total facilities consist of 15 rooms in the West Wing and two rooms in the East Wing of Building 11. Among the inmates confined in Special Housing are those placed in "administrative" as well as "punitive" segregation, quarantined inmates and protective custody cases.

The Superintendent admitted under cross-examination that no matter how admission to Special Housing was administratively

denominated or how diverse were procedures for commitment thereto, there is no difference in the degree of punitiveness of the conditions of a person so confined. This is so whether commitment was by Adjustment Committee proceedings or Superintendent's Proceedings. Inmates placed in Special Housing are all locked in 23 hours a day, whether committed for punitive, protective or administrative confinement. The rigors are the same.

While the Rules and Regulations of the Department of Corrections [7 N.Y.C.R.R. §300-304], would appear to contemplate segregation and special housing as separate units, under appropriate circumstances, segregation units may be maintained within special housing and, indeed, correctional personnel may confine inmates as detention admissions therein (7 N.Y.C.R.R. §304.1). In such circumstances, however, non-punitive admissions shall not be denied any privilege merely by virtue of the fact of confinement in the unit [7 N.Y.C.R.R. §302.3(d)]. This would appear to comply with the definition of what is sometimes referred to as administrative or "keep lock" segregation, as differentiated from punitive segregation.

According to Superintendent Warne's testimony, these distinctions would not appear to be observed in differentiating types of confinement in Special Housing at Bedford Hills.

Viewed in this context, it is interesting to perceive how correctional personnel seek to justify differentiation of procedures and goals between Adjustment Committee and Superintendent's Proceedings, while the nature and quality of confinement resulting therefrom is substantially identical.

According to departmental regulations (7 N.Y.C.R.R. §§252, 253), corroborated by testimony at trial, there are great procedural differences between Adjustment Committee and Superintendent's Proceedings.

The Adjustment Committee, as explained by the Superintendent, and corroborated by several other witnesses, consists of three members, including one corrections Lieutenant and one civilian member. The goals of the Adjustment Committee are:

> "...to change the attitudes of the person involved and to bring them around to realizing the need for following the standards as set by the department in the institution

> ... and if it is functioning properly, it is also a counseling unit. That is why they have three people on it, and that they are to discuss with the inmate what she has done, try to determine why, and see if there is some way of referring her or problem solving or referring her to mental hygiene." [Tr. p.224-25]

The Superintendent testified that there are no set rules for the Adjustment Committee, that the Committee may confine an inmate in segregation in Special Housing, but that the Committee must "see" those so confined, [i.e., review the cases] every seven days. Bedford Hills has no special disciplinary procedures other than those required by the Code of Rules and Regulations of the Department.

As required by departmental regulations (7 N.Y.C.R.R. §270.1) determinations of the Adjustment Committee may be reviewed by the Superintendant upon the request of the prisoner or automatically by the Commissioner at the end of thirty days of confinement. The prisoner does not receive advance notice of the proceeding and is not given a written copy of the disposition of charges.

The reasons given for the differences in procedures

between the Adjustment Committee and Superintendent's Proceedings is that the former is said to be marked by flexibility and non-punitive intent in attempting to effectuate changes in inmate attitude, whereas the latter proceeding is solely disciplinary in nature. However, it is manifest in comparison of the scope of permissible Adjustment Committee action [7 N.Y.C.R.R. §252.5(e)] with the scope allowable under a Superintendent's Proceeding [7 N.Y.C.R.R. §253.5] that there are striking similarities between the punishments that may be meted out in both proceedings. Both are initiated by reports of disciplinary infractions, and both may result in confinement in segregation. Furthermore, all of the corrections officers who testified agreed that the Adjustment Committee may, by acting every seven days, keep a prisoner confined in segregation for an indefinite period, subject only to review by Superintendent and Commissioner every thirty days.

As a practical matter, the Adjustment Committee does not function except in cases of objective acts of misconduct. We consider the presence of a lack of a genuine intention to cooperate with the administration, an intent to intimidate

other inmates or correction officers, an intent to engage in assaultive behavior, or an intent to conduct oneself in a manner contemptuous of the administration, when evidenced by more than the intuitive reaction of the charging officer, as objective misconduct. Segregation invoked as a result of objective misconduct and intended to deter the inmate, and by example, to deter other non-compliant prisoners, must be considered as "punitive" and the Court so regards it. Inmates of Bedford Hills are not customarily haled before the Adjustment Committee and placed in segregation solely for "correctional treatment goals" (Wolff, supra, at p. 5200) in the absence of objective misconduct, and therefore the resultant segregation could not be regarded as other than punitive.

The Superintendent's Proceedings, by comparison, is governed by a stringent set of procedures to be followed. 7 N.Y.C.R.R. §253. As specified by regulations, formal charges must be preferred in writing and a neutral and detached observer, generally the deputy superintendent, must be appointed as presiding officer. An employee must be appointed to furnish assistance to the inmate and the inmate must be told that any

statements that he makes may not be used over his objection at a criminal proceeding. The realm of punishments are as broad as those in Adjustment Committee proceedings with regard to punitive segregation in Special Housing for periods of more than 30 days with review similar to that provided Adjustment Committee proceedings. [7 N.Y.C.R.R. §270.2.]

It is in this context, then, that we now consider the Adjustment Committee's actions with respect to plaintiff on May 23, 1974 following expiration of her sixty day confinement in punitive segregation.

On the morning of May 23, 1974, plaintiff was let out of her cell in segregation and allowed to remain alone in the day room of Special Housing until shortly after the noon hour, when she was summoned to a newly-convened meeting of the Adjustment Committee, consisting at that time of Captain Wooley, Lieutenant Cradle, and Mr. Smith, a civilian employee.

According to plaintiff's testimony, corroborated in significant part by Captain Wooley, she was told by the Adjustment Committee that she was to remain in segregated confinement

at the present time, but not deprived totally of privileges, and her case was to be reviewed by the Adjustment Committee on a weekly basis. The inference to be drawn, of course, is that it had been determined that plaintiff remain in administrative, as opposed to punitive, segregation for a protracted period of time, subject to weekly review. But the written proceedings of the Adjustment Committee do not support this conclusion.[2/]

Upon the testimony of Lieutenant Cradle and Captain Wooley, the Court finds that these two members of the Adjustment Committee met with Superintendent Warne prior to plaintiff's release from segregation and prior to the Adjustment Committee hearing.. While the Court credits their testimony that their sole reason for meeting was to discuss the total situation with regard to dealing with a prisoner whom they believed to be intractable and violent, the conclusion is inescapable that such a discussion amounted to a tentative determination and disposition of plaintiff's future confinement prior to according her any hearing.

On the following day, there occurred an incident in

which petitioner refused to return to her cell to be locked in. Plaintiff alleges that she was not told that she was to be locked in segregation, and feeling that there had been some clandestine change made in her status, refused to comply. While there is some confusion as to what orders were actually given, it is clear that plaintiff, rather than acceding quietly to the directions of correctional personnel, became loud and defiant, refusing to return to her cell, intending thereby to provoke a confrontation. Only when a dozen or more corrections officers were brought to the scene in a show of force, did plaintiff return to her cell.

This incident was discussed on May 26, 1974 at an Adjustment Committee meeting consisting of the same personnel, and plaintiff had further appearances before that Committee on June 3, 6, 13 and 20, 1974. Adjustment Committee reports of these meetings are relatively incident free insofar as concerns plaintiff, except that the Committee reported generally that her attitude continued to be somewhat hostile, contemptuous and uncooperative. The Committee concluded that she would not give clear and unambiguous assurances that there would be no recurrence of her prior violent and assaultive behavior if she

were released to the general prison population.

On June 22, 1974, the Superintendent reviewed the Adjustment Committee findings, pursuant to regulation, and decided on the basis of that review to continue plaintiff in segregation. There is no record of any appeal to, or disposition by, the Commissioner, such as is permitted by regulations.

It is undisputed by any of the parties that as to the Adjustment Committee proceedings heretofore mentioned, there was no advance notice, written or otherwise, to the plaintiff, and no written notice to her of any decisions made on the basis of stated findings. It is also clear that several of the officers who sat on the Committee had previously preferred or investigated charges against plaintiff which had some bearing on the matters before them. While the procedure followed by the Adjustment Committee with regard to gauging plaintiff's subjective willingness to conform in the future to rules of general conduct was imprecise, it was not so clearly vague and over-broad as to deprive plaintiff of a clear indication of how she might tailor her conduct to meet institutional norms. Johnson v. Board of Parole, ____ F.2d ____ (2d Cir. 1974).

Plaintiff was asked on several occasions whether she would obey the rules and refrain from inciting trouble. On the basis of her vague and equivocal responses, as well as her past history of assaultiveness, it cannot be said that the factual findings of the Adjustment Committee and its reluctance to place plaintiff in the general prison population were either an abuse of discretion or clearly erroneous.[3/]

Clearly, the disciplinary proceedings enumerated herein are greatly affected by the Supreme Court's recent pronouncement in Wolff v. McDonnell, ___ U.S. ____, 94 S.Ct. 2963, 42 U.S.L.W. 5190 (6/26/74), which purports to set forth guidelines as to those elements of procedural due process which are required for state correctional disciplinary activities. Among the rights specifically granted by the Supreme Court to state prisoners were: (1) advance written notice of charges to be given no less than 24 hours before an inmate's appearance before the Adjustment Committee; (2) a written statement by the fact-finders as to the evidence relied on and reasons for the disciplinary action; (3) the right to call witnesses and permit documentary evidence in

defense, so long as it will not jeopardize institutional safety or correctional goals; (4) the right to inmate assistance or counsel substitute in the event that the inmate is illiterate, or the issues are unusually complex. However, Wolff specifically disavowed the application of due process safeguards of a full-scale criminal proceeding, or even those necessary for a parole or probation revocation hearing. As stated by Justice White:

> "Of course, as we have indicated, that a prisoner retains rights under the Due Process Clause in no way implies that this right is not subject to restrictions imposed by the nature of the regime to which he has been lawfully committed. [Citations omitted.] Prison disciplinary proceedings are not part of a criminal prosecution, and the full panoply of rights due a defendant in such proceedings does not apply. [Citations omitted.] In sum, there must be a mutual accommodation between institutional needs and objectives and provisions of the Constitution that are of general application." Wolff v. McDonnell, supra, 42 U.S.L.W. at 5195-96.

Among those procedures which Wolff specifically finds lacking in constitutional basis are confrontation and cross-examination, as well as right to counsel. While Wolff is primarily concerned with disciplinary procedures relating to

denial and revocation of good time credit, its holding applies with equal force to disciplinary procedures which may result in placement in solitary confinement. But, the procedures mentioned are not necessarily required for deprivations of less magnitude, such as the mere loss of privileges. Wolff v. McDonnell, 42 U.S.L.W. at 5200, n.19. Further, the Court specifically holds its newly-enunciated rules are non-retroactive. Wolff v. McDonnell, supra, at 5201.

Thus as to all disciplinary procedures utilized by the prison officials between May 23 and June 26, 1974, the previous rules of the sort mentioned in Sostre v. McGinnis, 442 F.2d 178 (2d Cir.), cert. denied, 404 U.S. 1049 (1971) and its progeny, are, to the extent they are less stringent than Wolff, the standards to which defendants must conform. It is to be understood, and the defendants have so conceded, that, as to any disciplinary proceedings instituted after that date, the Wolff procedures must be utilized and insofar as departmental regulations are in conflict, they shall be conformed thereto.

By contrast to Wolff, Sostre did not require written notice in advance, finding oral notice to be sufficient; Sostre

did not require a written record or statement of reasons, nor the right to present witnesses at a hearing; neither did Sostre require cross-examination nor counsel, even if by substitutes.

The Court must thus apply the lesser of Sostre or Wolff standards in evaluating the propriety of Adjustment Committee proceedings conducted in May and June.

On the basis of those standards, the Court finds that while in a very general way plaintiff was apprised of future Adjustment Committee meetings, there was not the requisite specificity to such notice to comport with Sostre. Plaintiff was simply brought in and charged. Clearly, such lack of notice is plainly insufficient, particularly when confinement in segregation by the Adjustment Committee is technically limited by regulation and must be reviewed de novo every week. Such procedural safeguards as advance oral notice should have been given, but were not. The Court also concludes, as indicated above, that the presence on the panel of officers involved in previous investigations of the incidents of misconduct violated plaintiff's right to an impartial tribunal.

Further, informal discussions before holding these hearings serves to vitiate the requirement of impartiality in acting as a fact finding body which is an essential element of minimal due process. While Wolff and Sostre are both silent as to specific criteria for neutral and detached hearing officers, see Nieves v. Oswald, infra, it is implicit that a hearing officer should not have had prior discussions of the outcome of a future quasi-judicial proceeding and should not have been an investigative officer or witness. Morrissey v. Brewer, 408 U.S. 471 (1972); Escalera v. N.Y.C. Housing Authority, 425 F.2d 853 (2d Cir. 1970); Goldberg v. Kelly, 397 U.S. 254 (1970); Sands v. Wainwright, 357 F.Supp. 1062, (M.D. Fla. 1973); Landman v. Royster, 333 F.Supp. 621 (E.D. Va. 1971).

The Court declines to find, however, that the failure to call specific witnesses violated petitioner's rights under Sostre. Clearly, while Sostre requires reasonable opportunity to confront charges and make reply in defense, there exists no constitutional right to call defense witnesses. Even the Wolff court does not require this if, in the initial judgment of the prison administrators, it would "jeopardize institutional safety or correctional goals."[4/]

The power of this Court is circumscribed, properly, by Sostre and Wolff to consideration of what is required to be done by defendants under the Constitution, rather than the determination of what is desirable. On this basis, then, there was no deprivation of right to confrontation on the basis of Sostre procedures.

One point not considered by the Wolff court is that of the potentially open-ended nature of segregated confinement and the necessity of periodic review thereof. Indeed, this is a question upon which Sostre specifically reserved decision Sostre v. McGinnis, supra, at 192-93. However, administrative regulations of the Department of Correction, clearly require such regular review. 7 N.Y.C.R.R. §270. Without such a safeguard the modified panoply of procedural rights granted inmates would be meaningless, if subject to be divested of any further rights with respect to continued confinement and periodic review thereof. Cf. Baxstrom v. Herold, 383 U.S. 107 (1966).

Clearly, as to the Adjustment Committee's weekly reviews of plaintiff's continued confinement, subsequent to June 26, 1974, the Wolff procedures must be met. As noted supra,

the record here plainly demonstrates that, by whatever name denominated, the confinement imposed is plainly of the character of punitive segregation.

Were Bedford Hills to have separate facilities or procedures by which inmates might be subjected to administrative segregation without any greater loss of privileges than naturally consequent upon a physical separation from the general prison population, the Court's conclusion might be different. Cf. Walker v. Mancusi, 338 F.Supp. 311 (W.D. N.Y. 1971), aff'd. 467 F.2d 51 (2d Cir. 1972); Szcerbaty v. Oswald, 341 F.Supp. 571, 573 (S.D.N.Y. 1972); Schumate v. People of State of New York, 373 F.Supp. 1166, 1168 (S.D.N.Y. 1974). However, there is only one set of segregation facilities at Bedford Hills providing only one kind of solitary confinement; punitive segregation, no matter by what name the defendants attempt to denominate it. In such a situation and until the defendants provide appropriate modified segregation facilities to provide administrative confinement, the Court is constrained to enforce the due process safeguards of Wolff upon any disciplinary confinement in Special Housing that is punitive in nature; that is to say, that provides for total confinement

along with concomitant diminution of privileges, and consequent on misconduct or objective evidence of threatened future misconduct.

As to the specific procedural due process required in the instant case, the plaintiff is entitled to appear before an impartial panel, be it Superintendent's Proceeding or Adjustment Committee meeting, such that no complaining witness or investigating officer may sit on the panel. Cf. Nieves v. Oswald, 477 F.2d 1109, 1113 (2d Cir. 1973).

Moreover, it is inappropriate and inconsistent with procedural due process for members of the Adjustment Committee to discuss the incidents of misconduct with other administrative or superior officers in advance of the hearing. Since such conduct occurred in the past, it shall be enjoined. Plaintiff is also entitled to appear before an impartial Committee which has not had contact with any of plaintiff's prior proceedings.

Given the exigent facts and circumstances surrounding this case, the Court finds that this plaintiff, highly intelligent, articulate and engaged in college level study, is not constitutionally entitled to counsel or lay substitute,

which right was specifically reserved in Wolff for those showing a personal need.

As to the appropriate standards to be employed for continued confinement in punitive segregation, the Court adheres to its ruling at the trial, that such confinement may be based upon objective facts only and misconduct. Such facts include, but are not limited to, any refusal to cooperate with the administration, any present intent to intimidate other inmates or correctional officers, engage in assaultive behavior, or behave contemptuously towards prison staff. Given the difficulties in prescribing precise guidelines for corrections officers in disciplinary cases consistent with the proper maintenance of security and prison discipline, we should leave such categories as broad as possible in order that corrections officials may have the widest latitude in dealing with the exigencies of individual situations. See Wright v. McMann, 460 F.2d 126, 130 (2d Cir.), rev'g. in part, 321 F.Supp. 127 (N.D.N.Y. 1970), cert. denied 409 U.S. 885 (1972).

As to the pre-Wolff procedures utilized, the Court declines to find that the defendants have acted with any of the

indicia of bad faith sometimes found in such cases, Wright v. McMann, supra; Sostre v. McGinnis, supra.

Clearly, where the defendants have had to deal with a highly volatile, contentious and assaultive inmate, previously convicted of manslaughter, who had injured four corrections officers in a subsequent scuffle, it cannot be said with certainty that she no longer poses a clear and present danger to the security of the institution, as well as the safety of other inmates. This is all the more so in the light of plaintiff's repeated outbursts and refusals to comply voluntarily with institutional rules until faced with a show of physical force.

In the event that the administration concludes upon the basis of an objective factual determination made in good faith by a disinterested official that plaintiff must be kept away from the general prison population, such non-punitive segregation must be so calculated as to grant her every privilege or benefit that may be conferred. Such administrative segregation cannot be imposed on the same basis as punitive segregation. Expressed another way, while on the basis of objective criteria, plaintiff may not be kept in punitive segregation without a full

Wolff hearing, it appears she may be still kept in less restrictive administrative segregation, with as many concomitant privileges as are practicable, if she presents a clear and present danger to herself, to other prisoners, or to the correctional officers. Further, plaintiff may be confined administratively for that brief period required to draft and file charges and to give the required 24 hours written notice of hearing following any alleged episode involving violence or assaultive or disruptive behavior.

While the Constitution is not foreclosed to prison inmates, there are practical limitations upon the amount of supervision in which the federal courts may engage in overseeing the day to day administration of state correctional facilities. Wright v. McMann, supra; Walker v. Mancusi, supra.

So long as Bedford Hills continues to provide only one kind of segregated confinement, however, similar disciplinary due process safeguards must attend all such inmates who are placed therein. It is implicit in Wolff that should the administration see fit to provide separate facilities for "keep-lock" or administrative segregation, without so great

a diminution of privileges as attends punitive segregation, that full Wolff procedures are not necessarily applicable.

The foregoing constitutes findings of fact and conclusions of law pursuant to Rule 52(a), F.R.Civ.P., and except to the extent hereinbefore modified, the findings and conclusions stated on the record at the close of trial are also adhered to.

Settle a final order on three (3) days notice.

Dated: New York, New York
September 30, 1974

Charles L. Brieant Jr.

CHARLES L. BRIEANT, JR.
U. S. D. J.

F O O T N O T E S

1. The scope of these preliminary findings was as follows:

(1) Plaintiff is entitled to appear before impartial Adjustment Committee to extent that no member of Board should participate when he is complaining witness or investigating officer.

(2) It is inappropriate for members of Adjustment Committee to discuss hearing in advance with superiors who may be called upon to review actions before they have held the hearing, but may do so after deciding the factual issues.

(3) Impartial hearing must be held consisting of committee not comprising persons who have had prior relationship with proceedings as to this inmate since February, 1974.

(4) No right to counsel is available as plaintiff is not illiterate, is college-educated, and issues are not of such complexity as to necessitate counsel.

(5) Any punitive segregation must be based upon objective facts only, and misconduct, including

(i) the presence of a lack of a genuine intention to cooperate with administration;

(ii) presence of an intent to intimidate other inmates or correctional officers;

(iii) intent to engage in assaultive behavior;

(iv) intent to conduct oneself in a manner contemptuous of administration.

(6) If prison administration determines to keep prisoner out of general population, pendente lite, they must do so based on objective determination by impartial official and that such non-punitive segregation must be calculated to grant every liberty, privilege or benefit possible. May not be on same basis as punitive segregation

(7) The Court declined to order prisoner returned to the general prison population.

2. For example, the Adjustment Committee's report on June 3, 1974 says:

"Comments on attitude of inmate--
Satisfactory - except she quietly and

> speaking with a smirk said the Adjustment Committee and administration was a joke. She is contemptuous of us, and refused to sit down. Remained standing and stated she had nothing further to say."

And again, on June 20, 1974:

> "Wants to go to school, wants to know what happens next. Wants to finish equivalency class and College Course. Has no remorse. Says incident is over with and she is going to Court and willing to deal with everything in a quiet manner. 'What is my attitude suppose to be'. Can't say at this moment how she will act in future. Says she will try to abide by the rules. Attitude fair, sat with smile & back to Committee Members & spoke only to Lt. Guenther. Committee meant nothing to her."

We could not say that the Committee's finding of continued misconduct was clearly erroneous or that its imposition of additional segregation was, under the circumstances, totally unwarranted.

3. Plaintiff's attitude and conduct at the trial was in all respects exemplary, and in complete contrast to her prior behavior in the institution. It is clear, however, that she regards herself as in contest with the prison

administration in a number of areas, and is more interested in vindicating her own view of her rights than in accommodating to prison discipline and doing "easy time" or earning good time and favorable parole consideration. Plaintiff seems to have many friends among the prison population and regards herself also as their champion. A true "adjustment" here, effected by a psychologist or psychiatrist or some other counsellor who could gain plaintiff's confidence and dissipate her hostility and contentiousness would be in the interest of all concerned.

4. Justices Marshall and Douglas correctly recognized in dissent that any such right to call witnesses by the inmate was, for all practical purposes, judicially unenforceable and amounted to the Court's giving "neighborly advice" to state correctional authorities. Wolff, supra, 42 U.S.L.W. at 5206.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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CAROL CROOKS,

Plaintiff,

-against-

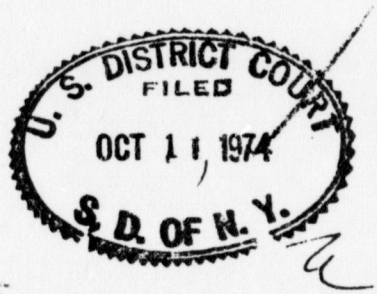
JANICE WARNE, individually and as Warden of the Bedford Hills Correctional Facility, CAPTAIN WOOLEY, individually and in her capacity as Captain at the Bedford Hills Correctional Facility, LIEUTENANT CRATTLE, individually and in her capacity as Lieutenant at the Bedford Hills Correctional Facility,

Defendants.

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74 Civ. 2351
(CLB JA)

FINAL
JUDGMENT



The action having come on for trial before the Court on July 1 and 2, 1974, Honorable Charles L. Brieant Jr., District Judge presiding, and the issues having been duly tried and ~~decision~~ findings of fact and conclusions of law having been duly rendered,

It is ORDERED, ADJUDGED AND DECREED that

1. The adjustment committee hearings given to Plaintiff on May 23, 26, June 3, 6, 13, and 20, 1974, violate Plaintiffs right not to be deprived of liberty without due process of law in that:

a) there was no advance notice to her of the charges to be considered at adjustment committee meetings;

b) the adjustment committee that met on each of the above occasions was not an impartial tribunal.

~~2. Plaintiffs records shall be expunged of all reference to the adjustment committee proceedings of May 23, 26, June 3, 6, 13, and 20, 1974.~~

3. Defendants shall give Plaintiff written notice of charges against her 24 hours in advance of any Adjustment Committee meeting or Superintendents Proceeding to which she is a party.

4. No member of any Adjustment Committee to which Plaintiff is a party shall discuss the pending matter with other administrative or superior officers in advance of the hearing.

5. Plaintiff shall have the right to call witnesses and introduce documentary evidence at any Adjustment Committe meeting or Superintendents Proceeding to which she is a party, provided doing so does not jeopardize institutional safety or correctional goals.

6. At the conclusion of any Adjustment Committe meeting or Superintendents Proceeding to which Plaintiff is a party, she shall be given a written statement of the evidence relied on and the reasons for any action taken.

7. Any disciplinary action against Plaintiff by the Adjustment Committee shall be taken only after a finding of misconduct based on objective facts if such action involves punitive segregation.

8. If Plaintiff is charged with an act of misconduct she may be segregated administratively (see paragraph 9) but for such

period of time that it takes to draft and file charges, and to give her the 24 hours notice specified in paragraph 3. Under no circumstances is she to be segregated for more than 24 hours before written notice of charges are served on her.

9. Plaintiff may not be segregated from the general prison population without affording her the procedures specified in paragraphs 3 through 8, unless there is objective factual determination that she presents a clear and present danger to herself, to other prisoners, or to correction officers. (administrative segregation)

10. If Plaintiff is segregated administratively as specified in paragraph 9 she shall be granted every privilege accorded to the general prison population, concommitant with her segregated status.

~~11. The Court shall retain jurisdiction for purposes of enforcement of this Order.~~

this clause is deleted as unnecessary CLB USDJ

DATED: New York, New York
October 11th, 1974

Charles L. Brieant Jr
U. S. D. J.

JUDGMENT ENTERED - 10-15-74
Raymond F. Burghardt
CLERK

* * * *

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

CAROL CROOKS,

Plaintiff,

-against-

JANICE WARNE, ET. AL.

Defendants

ORDER TO SHOW CAUSE
TO PUNISH FOR CONTEMPT
74 Civ. 2351
(CLB Jr.)

COPY OF WITHIN RECEIVED
NEW YORK CITY OFFICE
ATTORNEY GENERAL

AMC

Upon the annexed affidavit of STEPHEN M. LATIMER, sworn to September 4, 1974, and upon the order of this Court issued orally on July 2, 1974, and upon all the proceedings had herein;

IT IS HEREBY ORDERED THAT ~~IT~~ the Defendant WARNE show cause before the Honorable Charles L. Brieant Jr., at the U.S. Courthouse, Foley Square, New York, on September 10, 1974, at 9:30 or as soon thereafter as counsel can be heard why she should not be adjudicated in contempt of this Court pursuant to 18 U.S.C. §401 (b) on the grounds that she willfully violated the preliminary injunction issued by this Court on July 2, 1974, in that she caused Plaintiff to be placed in punitive segregation without notice of charges, and without the hearing required by the injunction, and kept her there for three and one half days before she was surreptitiously transferred to another institution.

IT IS ORDERED THAT ~~that~~ personal service of a copy of the Order to Show Cause and supporting Affidavit upon the Attorney General of the State

of New York on or before September , 1974, at 5:00 P.M. be good and sufficient service.

DATED: New York, N.Y.
September 5, 1974.

/s/ WILLIAM C. CONNER
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

CAROL CROOKS,

Plaintiff,

-against-

JANICE WARNE, ET. AL.

Defendants.

ORDER TO SHOW CAUSE
TO PUNISH FOR CONTEMPT
74 Civ. 2351
(CLB Jr.)

STEPHEN M. LATIMER, being duly sworn says:

I am the attorney for Plaintiff. I make this affidavit in support of Plaintiff's motion to punish Defendant WARNE for contempt of this Court's preliminary injunction.

Plaintiff sought injunctive relief requiring the Defendants to accord her a due process hearing before confining her in punitive segregation. On July 2, 1974, this Court issued a preliminary injunction prohibiting the Defendants from confining Plaintiff in puni-

tive segregation unless she is granted an impartial hearing on 24-hour notice (T 352) [1] before an impartial tribunal (T 351) and based on an objective determination of misconduct by that tribunal (T 352). On August 28, 1974 at approximately 10:00 P.M. Plaintiff was forcibly removed from her cell and placed in segregation without regard for this Court's mandate.

Earlier that day, another inmate accused Plaintiff of hitting her in the mouth.[2] During the day Defendant Wooley asked Plaintiff to go to segregation. Plaintiff replied that she wanted 24-hours written notice of the charges against her as required by the injunction and by Wolff v. McDonnell. At about 10:20 P.M., after all the inmates were locked in their rooms for the night several male correction officers entered Plaintiff's room, tied her up savagely assulted her and brought her to segregation where she was confined in a strip cell without clothes, bed or blanket.

As a result of the beatings, Plaintiff suffered severe physical injuries. When she requested, through me, to have her personal physician examine her, permission was granted and, then a scant two hours before the proposed visit on Friday, August 30, 1974, rescinded by Defendant Warne without explanation. The physician, Dr. Helen Joan Waitkevicz, had examined Plaintiff in Bedford Hills on March 14, 1974.

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1 The letter "T" followed by a number refers to the transcript of the trial minutes.

2 On information and belief someone other than Plaintiff admitted the act.

Order to Show Cause to Punish For Contempt of Preliminary Injunction.

Plaintiff remained confined in segregation until Sunday, September 1, 1974 in the early afternoon. She never received notice of pending charges and never received a hearing. On Sunday, September 1, 1974, on the pretense that she had a visitor, Plaintiff was taken from her cell, placed in an automobile which is used to transport prisoners on the grounds, and spirited away to Fishkill Correctional Facility.

All her clothing and personal effects were left at Bedford Hills, as were her prison records. As of Tuesday, September 4, 1974, Plaintiff was under 24-hour lock-in in her cell at Fishkill. She has not yet been charged with any disciplinary infraction.

A-I PLF MOVES BY ORDER TO SHOW CAUSE BECAUSE SHE IS IRREPARABLY HARMED BY CONTINUED CONFINEMENT IN PUNITIVE SEGREGATION AS HEREIN SAID

As a result of Defendants actions, Plaintiff has and continues to suffer severe physical injury, pain and suffering and great mental, emotional and spiritual distress. She has been damaged thereby in the amount of $25,000.00. Plaintiff estimates that a reasonable attorney's fee for this proceeding is $1500.

Plaintiff therefore requests that this Court cite Defendant Warne for contempt of Court and to direct that 1). Damages be awarded in the sum of $25,000., and 2). Defendant Warne be fined the sum of $50,000 which shall include the sum of $25,000.00 fixed as damages.

A-II NO PRIOR APPLICATION FOR THE SAME OR SIMILAR RELIEF HAS BEEN MADE.

Sworn to before me this
5th day of September, 1974.

DEBORAH JOHNSON
NOTARY PUBLIC, STATE OF NEW YORK
No. 31-4511880
Qualified in New York County
Commission Expires March 30, 197[illegible]

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT NEW YORK

CAROL CROOKS, Plaintiff, -against- JANICE WARNE, ET AL., Defendants.	:	74 CIV. 2351 (CLB) ANSWER TO ORDER TO SHOW CAUSE TO PUNISH FOR CONTEMPT

Defendants, by their attorney, LOUIS J. LEFKOWITZ, Attorney General of the State of New York, for their answer to the order to show cause, herein, respectfully:

FIRST: Deny so much of the allegations in the affidavit as states or implies that the injunction issued by this Court prohibits the placing of plaintiff in the special housing unit, unless prior thereto there is an adjudicatory procedure upon 24 hours written notice, but admit that the order issued by this Court requires that

(1) The Committee on Adjustment must be impartial -- to the extent that no member of the Board may participate in the case where he or she has been the complaining officer or an investigating officer or otherwise connected with the case.

(2) The Committee does not discuss issues arising out of the infraction with the administration or superior officers in advance of the hearing and,

(3) Plaintiff is entitled to 24-hour written notice prior to such hearing.

SECOND: Deny each and every allegation contained in the Third unnumbered paragraph of the affidavit in support of the order to show cause, except admit

(a) That another inmate accused plaintiff of hitting her in the mouth.

(b) That defendant Wooley asked plaintiff to voluntarily go to the special housing unit.

(c) That plaintiff violently refused to go to segregation.

(3) That after the inmates were locked in, the female corrections staff again asked plaintiff to go to segregation. Plaintiff refused and acted in a violent and threatening fashion, necessitating the call of the male staff.

(4) The male staff after using the minimum force necessary to subdue plaintiff, who had fashioned a weapon out of broken glass and had barricaded herself in her room, carried her by car, from her room to the special housing unit.

THIRD: Admit each and every allegation contained in the fourth unnumbered paragraph of the Latimer affidavit except

deny so much of the allegations of said paragraph as alleges that plaintiff was beaten, and further deny that plaintif suffered any physical injuries.

FOURTH: Admit only so much of the allegations contained in plaintiff's fifth unnumbered paragraph as alleges that

(1) That to September 1, 1974, plaintiff, due to a severe disturbance at the facility, the inability of the administration to establish an "impartial" hearing board, and to complete their investigation of the serious charges over the course of a holiday weekend, did not serve charges upon petitioner.

(2) That at approximately 2:45 p.m. on Sunday, September 1, 1974, petitioner was transferred, pursuant to verbal orders of Deputy Commissioner of Correctional Services Quick, from Bedford Hills Correctional Facility to Fishkill Correctional Facility.

(3) Plaintiff was informed, prior to the transfer, of the fact she had a visitor.

FIFTH: Admit only so much of the allegations contained in the fifth unnumbered paragraph of the affidavit as alleges that her clothing and personal belongings were not transferred with her immediately, except deny knowledge or information sufficient to form a belief as to the truth of each and every remaining assertion in said paragraph.

SIXTH: Deny each and every allegation contained in the seventh unnumbered paragraph of the affidavit, except deny knowledge or information sufficient to form a belief as to the truth of the remaining allegations in said paragraph.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

SEVENTH: The preliminary injunction issued and outstanding in this case, does not, in any way require, in all circumstances, that plaintiff is entitled to twenty-four hours notice prior to being placed in segregation.

EIGHTH: Defendant Warne, having received a report indicating plaintiff had assaulted and caused injury to another inmate, caused an immediate investigation to be made of said incident.

NINTH: As a result of said investigation, it was determined that there was probable cause to believe that

(1) a violation of facility rules had occurred;

(2) that said violation if sustained at a Superintendent's Proceeding would warrant a penalty of placement in punitive segregation for a period of sixty days; and

(c) that plaintiff committed the offense charged.

TENTH: As a result of said determination plaintiff was asked to voluntarily report to the special housing unit. She refused to so report.

ELEVENTH: As a result of plaintiff's adamant refusal to comply, coupled with unwarranted threats to the safety and security of the correction officers, and the destruction of her room, plaintiff was confronted by male correction officers, and using mattresses to defend themselves against plaintiff's armed vicious onslaughts, subdued her, using the minimum force necessary and carried her to segregation.

TWELFTH: All actions herein contained are specifically authorized by the Rules and Regulations of the Department of Correctional Services, -- specifically 7 N.Y.C.R.R. §§ 251.6(d) and (f), 304.1 (c) and 304.4 (a), (b).

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

THIRTEENTH: Defendants, their agents and employees, and those acting in concert with them, at all times, acted within their authority as employees of the Department of Correctional Services, in good faith and without malicious intent or intent to violate this Court's preliminary injunction, dated July 2, 1974.

FOURTEENTH: As a result of emergencies generated within the institution by other inmates, defendants were not able to afford a hearing or prepare a notice prior to or on September 1, 1974.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

FIFTEENTH: Plaintiff is represented by attorneys employed by the Bronx Legal Services Corp. C.

SIXTEENTH: As a result, plaintiff is, upon information and belief, represented without cost to her.

SEVENTEENTH: Upon information and belief, plaintiff's attorneys are fund entirely or substantially entirely by public monies, on the condition that their clients are represented free of charge.

EIGHTEENTH: Therefore plaintiff is not entitled to recover attorneys fees of defendants.

WHEREFORE: Defendants respectfully pray this Court enter a judgement

(1) That plaintiff take nothing and that defendants, recover of plaintiff their costs in this action.

(2) That this Court adjudge defendants not in contempt of its order of July 2, 1974.

Respectfully submitted,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants
By

STANLEY L. KANTOR
Assistant Attorney General
Office & P.O. Address
2 World Trade Center
New York, New York 10047

Memorandum Endorsed Upon Order to Show Cause to Punish For Contempt.

Carol Crooks, Plaintiff v. Janice Warne, et al., Defendants.

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Our findings and conclusions following the trial of this action are being filed simultaneously herewith.

Our preliminary injunction issued at the close of the trial did not explicitly prohibit limited non-penal segregation of plaintiff following a disruptive incident, and during the passing of the required twenty-four (24) hour written notice of charges and the time prior thereto required to draft and file charges. In our final determination of this litigation being filed today, we conclude that such administrative segregation would be permissible in a proper case. The terms of the preliminary injunction did not give a reasonable person adequate notice that what was done on and following August 28, 1974 would be punished as a criminal contempt. As Miss Crooks has been transferred to another facility, there appears to be no basis for coercive or civil contempt proceedings against defendant Warne, whose responsibilities are limited to the Bedford Hills institution.

The motion is denied in all respects. Such denial is without prejudice to plaintiff's rights and shall not be considered an adjudication of any factual issue raised in the motion papers having to do with the events of August 28, 1974 and thereafter.

So Ordered.

Dated: New York, New York
September 30, 1974

Charles L. Brieant Jr.

CHARLES L. BRIEANT, JR.
U. S. D. J.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

CAROL CROOKS,

Plaintiff,

-against-

JANICE WARNE, individually and as Warden of the Bedford Hills Correctional Facility, CAPTAIN WOOLEY, individually and in her capacity as Captain at the Bedford Hills Correctional Facility, Lieutenant Crattle, individually and in her capacity as Lieutenant at the Bedford Hills Correctional Facility,

Defendants.

74 Civ. 235] (CLB Jr.)

NOTICE OF APPEAL

S I R S :

NOTICE is hereby given that defendants, and each of them, hereby appeal to the United States Court of Appeals for the Second Circuit from the Final Judgment entered in this action on the 11th day of October, 1974, and from each and every part of said decree, as well as the whole thereof.

Dated: New York, New York
Nobember 11, 1974

Yours, etc.,

LOUIS J. LEFKOWITZ
Attorney General of the
State of New York
Attorney for Defendants-
Appellants

By:

STANLEY L. KANTOR
Assistant Attorney General
Office & P.O. Address
Two World Trade Cenetr
New York, New York 10047
Tel: (212) 488-5168

TO:

Clerk,
United States District Court
Southern District of New York
United States Courthouse
Foley Square
New York, New York 10007

STEVEN M. LATIMER, Esq.
Bronx Legal Services Corp. C
579 Courtlandt Avenue
Bronx, New York

STATE OF NEW YORK)
: SS.:
COUNTY OF NEW YORK)

Janet Portelly, being duly sworn, deposes and says that she is employed in the office of the Attorney General of the State of New York, attorney for Appellants herein. On the 3 day of February, 1975, she served the annexed upon the following named person:

Steven M. Latimer, Esq.
Bronx Legal Services Crop. C
579 Courtlandt Avenue
Bronx, New York

Attorney in the within entitled Appeal by depositing a true and correct copy thereof, properly enclosed in a post-paid wrapper, in a post-office box regularly maintained by the Government of the United States at Two World Trade Center, New York, New York 10047, directed to said Attorney at the address within the State designated by him for that purpose.

Janet Portelly

Sworn to before me this
3rd day of February, 1975

Assistant Attorney General
of the State of New York